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 REVIEW FROM THE FIRST DISTRICT COURT OF APPEAL

PETITIONER'S INITIAL BRIEF ON THE MERITS

OFFICE OF CRIMINAL CONFLICT
AND CIVIL REGIONAL COUNSEL
REGION ONE

MELISSA J. FORD
ASSISTANT CONFLICT COUNSEL
FLA. BAR NO. 0099401
P.O. BOX 1019
TALLAHASSEE, FLORIDA 32302
(850) 922-0179
mina.ford@rc1.myflorida.com

COUNSEL FOR PETITIONER

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I. PRELIMINARY STATEMENT

Cortez Hatten was the defendant in the circuit court, the appellant in the District Court of Appeal, and is the Petitioner in the case that is now before this Court. He will be referred to in this brief as "Petitioner" or by his proper name. References to the record are by "R" followed by the page number, all in parentheses. References to the three-volume trial transcript are by "T" and the volume number followed by the page number, all in parentheses. References to the supplemental record of the Rule 3.800(b)(2) motion are by "M" followed by the page number, all in parentheses.

II. STATEMENT OF THE CASE AND THE FACTS

Cortez Hatten was charged, in Gadsden County Case No. 2010-CF-239, with second degree murder, two counts of attempted second degree murder, aggravated assault with a firearm, and possession of a firearm by a convicted felon. All charges were based on an incident that occurred on April 25, 2010. (R. 39-40.)

After a jury trial, Hatten was convicted of attempted second degree murder.[1] The verdict reflected a jury finding that Hatten, in the course of committing attempted second degree murder, "actually possessed and discharged a firearm and caused death or great bodily harm." (R. 77-80; T3. 317-20.) Attempted second degree murder, ordinarily a second degree felony, was reclassified as a first degree felony, pursuant to section 775.087(1)(b), Florida Statutes. On this first degree felony, Hatten was sentenced to forty years in DOC custody, with twenty-five years as a mandatory minimum pursuant to 775.087(2), Florida Statutes; that section is commonly referred to as the "10-20-Life" statute.

Hatten challenged the legality of his sentence for attempted second degree murder in both the circuit court and the district court of appeal. He

[1] He was also convicted of manslaughter (a lesser included offense of second degree murder) and possession of a firearm by a convicted felon at the same jury trial; however, this brief involves only the sentence imposed for the count of attempted second degree murder.

filed in the circuit court a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), arguing that a forty-year sentence for a first degree felony that included a twenty-five-year mandatory minimum term pursuant to 775.087(2), was an illegal sentence because the total sentence exceeded the statutory maximum sentence for a first degree felony (thirty years). (M. 122-45.) The circuit court did not rule on the motion within sixty days of its being filed, and it was deemed denied by rule. See Fla. R. Crim. P. 3.800(b)(1)(B). (M. 146.) Hatten again raised this sentencing issue in a direct appeal in the First District Court of Appeal, in 1D12-5504.

In a written opinion issued on December 16, 2014, the First DCA affirmed Hatten's sentence of forty years with a twenty-five-year mandatory minimum, "based upon *Kelly v. State*, 137 So. 3d 2, 6-7 (Fla. 1st DCA 2014)," wherein the First DCA 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 Hatten's case, the First DCA certified conflict with Wiley v. State, 125 So. 3d 235 (Fla. 4th DCA 2013), "to the extent [Wiley] 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 DCA certified conflict with decisions of the Second, Fourth, and Fifth 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 of less than 30 years." Id. Those cases, which are listed in footnotes 2, 3, and 4 of the First DCA's Hatten opinion, 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).

On October 14, 2015, this Court accepted jurisdiction of Hatten's case after the filing of initial briefs on jurisdiction.

III. SUMMARY OF THE ARGUMENT

The trial court erred as a matter of law by sentencing Hatten to forty years with a twenty-five-year mandatory minimum pursuant to section 775.087(2), Florida Statutes, the 10-20-Life statute. Under the general sentencing provisions of Chapter 775, the maximum sentence for a first degree felony is thirty years. Section 775.087(2)(c), Florida Statutes, specifically outlines the manner in which the 10-20-Life statute should interact with general statutory maximum sentences. The First DCA's reading of section 775.087(2), Florida Statutes, is incorrect; where the trial court imposes a 10-20-Life mandatory minimum sentence that is less than the statutory maximum provided for in section 775.082, the applicable statutory maximum controls the total length of the sentence for the offense; the 10-20-Life statute does not provide the sentencing court with additional authority to impose, in addition to a mandatory minimum sentence, any total or general sentence it wishes without regard to the applicable statutory maximum.

IV. ARGUMENT

The First District Court of Appeal erred as a matter of law in ruling that section 775.087(2), Florida Statutes, permits a sentencing court to impose a sentence in excess of the applicable statutory maximum when the court imposes a mandatory minimum term that is less than the applicable statutory maximum.

Standard of Review

The issue in this case is one of statutory interpretation; it is a question of law that must be reviewed by this court under the *de novo* standard of review. See, e.g., Hilton v. State, 961 So. 2d 284, 288 (Fla. 2007).

Merits

In Hatten's case, the First District Court of Appeal has essentially ruled that where a defendant is convicted of a first degree felony enumerated in section 775.087(2)(a)1.a.-r. with discharge of a firearm causing death or great bodily harm, a sentencing court is empowered to determine a mandatory minimum sentence between twenty-five years and life and is also empowered to impose any total or general sentence for that enumerated first degree felony based solely upon section 775.087(2). This is an incorrect reading of the sentencing framework of Chapter 775 of the Florida Statutes.

General criminal penalties are addressed in section 775.082, Florida Statutes. A first degree felony is punishable "by a term of imprisonment not exceeding 30 years or, *when specifically provided by statute*, by

imprisonment for a term of years not exceeding life imprisonment." § 775.082(3)(b), Fla. Stat. (emphasis added). Section 775.087(2)(c), Florida Statutes, outlines the interaction of the 10-20-Life statute with general criminal penalties as follows:

> If the minimum mandatory terms of imprisonment imposed pursuant to this section exceed the maximum sentences authorized by s. 775.082…then the mandatory minimum sentence must be imposed. If the mandatory minimum terms of imprisonment pursuant to this section are less than the sentences that could be imposed as authorized by s. 775.082…then the sentence imposed by the court must include the mandatory minimum term of imprisonment as required in this section.

The First DCA's interpretation of this subsection renders meaningless the above provision that if the mandatory minimum is less than the sentence that could be imposed under section 775.082, the sentence imposed by the court must include the mandatory minimum term required in section 775.087. It is inappropriate to interpret a statute in a way that renders portions of its language as mere surplusage. See Mendenhall v. State, 48 So. 3d 740, 749 (Fla. 2010). By its plain language, section 775.087(2)(c), contemplates a situation in which a court sentences a defendant to a sentence authorized by 775.082, that includes a mandatory minimum term under 775.087(2), as part of the same sentence.

Although Petitioner contends that the plain language of section 775.087(2) is unambiguous and is inconsistent with the First DCA's interpretation and application, he recognizes that this Court may determine that ambiguities exist in the interplay of sections 775.087(2) and 775.082. In the event this Court determines that the language in section 775.087(2) is "susceptible to differing constructions," Petitioner respectfully reminds this Court that statutory language must "be construed most favorably to the accused[,]" in conformity with the rule of lenity. § 775.021(1), Fla. Stat. Consequently, Petitioner urges this Court to reject the First DCA's broad interpretation of the authority provided by section 775.087(2), and to adopt the interpretations stated by the Second, Fourth, and Fifth Districts in the certified-conflict cases.

In its written opinion in Hatten, the First DCA affirmed a sentence of forty years with a twenty-five-year mandatory minimum "based upon *Kelly v. State*, 137 So. 3d 2, 6–7 (Fla. 1st DCA 2014)." 152 So. 3d at 850. In Kelly, the First DCA held that a circuit court "in the First District may, pursuant to section 775.087(2)(b), Florida Statutes, impose a sentence in addition to its selected mandatory minimum sentence without regard to whether *additional* statutory authority for such an *additional* sentence exists." 137 So. 3d at 6-7 (emphasis added). Thus, it is clear that the First

DCA interprets section 775.087(2)(b) as permitting the sentencing court to *both* impose a mandatory minimum *and* impose any additional sentence of its choosing. However, the language of section 775.087(2)(b) explicitly states that the subsections of 10-20-Life requiring mandatory minimum sentences do "not prevent a court from imposing a longer sentence of incarceration *as authorized by law* in addition to the minimum mandatory sentence." (emphasis added). It seems obvious that the "longer sentence of incarceration" must be one that is authorized *by some law of the State of Florida*. The First DCA concludes that section 775.087(2) itself is the law under which a court may impose a forty-year sentence with a mandatory minimum term of twenty-five years, as was imposed in Hatten's case.

In Kelly, the First DCA stated that the Fourth DCA, in Wiley, had 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 authorized by law—that is, by an authorized sentence enhancer such as the habitual felony offender provision applicable in that case." 137 So. 3d at 6. The First DCA disagreed with that interpretation and certified conflict with Wiley, "to the extent that case holds that, under section 775.087(2)(b), Florida Statutes, a trial court may impose a sentence in addition to its selected mandatory minimum sentence imposed

under the 10-20-Life statute only if otherwise authorized by another statute." Id. at 7. Petitioner contends that the First DCA misinterprets the Wiley holding; the Wiley court simply reads section 775.087(2)(b) as providing that "while a trial judge may sentence a defendant pursuant to section (2)(a)3. to a mandatory minimum sentence between twenty-five years to life, the trial judge may give a sentence *over* the mandatory minimum selected only if 'authorized by law.' " 125 So. 3d at 241. This reading is based on the plain language of section 775.087(2)(b). The court in Kelly, on the other hand, fixates on the use of the phrases "as authorized by law" and "as otherwise authorized by law[,]" in section 775.087(2)(b), concluding that if the Legislature had intended any statute other than 775.087(2) to control the length of a sentence imposed under that section, the Legislature would have used the language "as otherwise authorized by law[,]" as it did when referring to the imposition of a sentence of death in the same subsection of the statute. 137 So. 3d at 6.

Petitioner suggests that the Second, Fourth, and Fifth Districts' holdings "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[,]" Kelly, at 850, represent the correct reading of the interplay between sections 775.087(2)

and 775.082. This Court accepted jurisdiction in Kelly, but jurisdiction was later discharged. However, the State acknowledged in its Answer Brief and at Oral Arguments "that the First District erred in interpreting § 775.087(2)(b), Fla. Stat." as permitting "the trial court on remand to sentence [Kelly] to the original twenty-five year minimum mandatory portion of his sentence, followed by any term of years up to life in prison without regard to whether additional statutory authorization existed to do so." Respondent's Answer Brief at 4, Kelly v. State, 160 So. 3d 896 (Fla. 2014) (No. SC14-916), 2015 WL 264789, at *4. It appears that there is consensus "that the intent of Florida's 10/20/Life statute is to 'give the trial judge discretion to inflate the mandatory minimum term of incarceration but not to re-define the statutory maximums.' " Mendenhall v. State, 999 So. 2d 665, 669 (Fla. 5th DCA 2008) (quoting Judge Griffin's concurring opinion in Yasin v. State, 896 So. 2d 875 (Fla. 5th DCA 2005)) approved, 48 So. 3d 740 (Fla. 2010).

Further, there is some indication in the legislative history leading to the enactment of the 10-20-Life mandatory minimums suggesting that the First DCA's interpretation is incorrect and that the Second, Fourth, and Fifth DCAs' interpretations are correct. The Senate Staff Analysis of Committee Substitute for Senate Bill 194, the companion to the House bill that resulted

in the enactment of 10-20-Life mandatory minimums, includes the following:

> Express authoritative language is provided to judges to sentence an offender to a longer sentence of incarceration or death if it is otherwise provided by law. This authority is given in all instances where an offender is subject to a minimum mandatory term of imprisonment pursuant to s. 775.087, F.S. Therefore, if because of another sentencing enhancement statute or because of the Criminal Punishment Code, and [sic] offender could be sentenced to an incarcerative period that is longer than the minimum mandatory sentence required under s. 775.087, F.S., the court can sentence the offender to the longer incarcerative period. An offender, however, will have to serve his or her minimum mandatory sentence as part of that longer sentence. Therefore, an offender will not be able to earn any gain-time for the minimum mandatory portion of his or her sentence; thus, the offender serves day-for-day on the minimum mandatory portion of the sentence.

Fla. S. Comm. On Crim. Justice, CS/SB 194 (1999) Staff Analysis 8 (Jan. 20, 1999).

This language draws no distinction between "as authorized by law" and "as otherwise authorized by law," as used in the 10-20-Life statute. It also suggests that the Legislature's intent was to empower a sentencing court to impose a 10-20-Life mandatory minimum and also to impose a longer period of incarceration as long as the longer period is authorized by the Criminal Punishment Code. The Criminal Punishment Code provides that "[t]he trial court judge may impose a sentence up to and including the statutory maximum for any offense." § 921.002(1)(g), Fla. Stat. It is clear that the

Legislature intended the Criminal Punishment Code to operate in conjunction with the mandatory minimum provisions of 10-20-Life.

Petitioner submits that section 775.082, Florida Statutes, prohibits the sentence imposed in his case because once a twenty-five-year mandatory minimum is imposed, the total sentence cannot exceed the statutory maximum of thirty years for a first degree felony. The Second and Fourth DCAs have reached the same conclusion in sentencing circumstances indistinguishable from Petitioner's. See Prater, at 147; Antoine, at 1078; Walden, at 661. On the same reasoning, the Second and Fifth DCAs have reversed sentences of life, including a mandatory minimum terms of twenty-five years under 10-20-Life, for first degree felonies. See Martinez, at 1120; McLeod, 52 So. 3d at 786. In the remaining certified-conflict cases, reviewing courts have held that if a sentencing court imposes a twenty-five-year mandatory minimum under 10-20-Life, it may not also impose a total term-of-years sentence that exceeds the applicable statutory maximum in section 775.082. See Levine, at 107; Sheppard, at 148-49; Roberts, 158 So. 3d 618; Wooden, 42 So. 3d 837.

In reversing a sentence of thirty-five years with a twenty-five-year mandatory minimum for a first degree felony, the Second DCA has best explained why this Court's decision in Mendenhall does not authorize such a

sentence:

> Mendenhall's sentence beyond the statutory maximum was proper because the trial court imposed the mandatory sentence under section 775.087(2)(a)(3), not because the statutory maximum was changed to a range of twenty-five years to life upon the jury's finding that he discharged a firearm causing great bodily harm. Section 775.087(2)(a)(3) does not change the statutory maximum to life in prison for all qualifying offenses when a defendant is found to have discharged a firearm causing great bodily harm.
>
> Here, because the jury found that Sheppard's discharge of a firearm inflicted great bodily harm, the mandatory minimum range under section 775.087(2)(a)(3) was twenty-five years to life. However, " 'once 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 postconviction court incorrectly concluded that the jury's special verdict exposed Sheppard to an overall maximum sentence of life imprisonment under sections 775.087(2)(a)(3) and 775.082(3)(b). Sheppard's thirty-five-year sentence impermissibly exceeds the thirty-year statutory maximum under section 775.082(3)(b) and is therefore illegal.

Sheppard, at 149 (internal citations omitted).

Section 775.087 authorizes reclassification of offenses and mandatory minimum sentences based on use, possession, and discharge of firearms. It does not authorize an increase—up to life—of the statutory maximum for a first degree felony where a defendant discharges a firearm and causes great bodily harm or death in the course of committing the felony. Section 775.087(2)(a)3. provides that the court may only exceed the statutory maximum of thirty years by imposing its sentence as a mandatory minimum.

CONCLUSION

Petitioner respectfully submits that this Court should resolve the conflict between the First DCA[2] and the Second,[3] Fourth,[4] and Fifth[5] DCAs regarding the sentencing authority provided for in section 775.087(2)(b), quash the ruling of the First DCA in Hatten, and remand his case to the trial court for resentencing consistent with the reasoning in the certified-conflict cases from the Second, Fourth, and Fifth DCAs.

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[2] Hatten, 152 So. 3d 849; Kelly, 137 So. 3d 2.

[3] Martinez, 114 So. 3d 1119; Sheppard, 113 So. 3d 148; Prater, 113 So. 3d 147.

[4] Wiley, 125 So. 3d 235; Levine, 162 So. 3d 106; Antoine, 138 So. 3d 1064; Walden, 121 So. 3d 660.

[5] Roberts, 158 So. 3d 618; Wooden, 42 So. 3d 837; McLeod, 52 So. 3d 784.

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, October 28, 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
Criminal Conflict & Civil Regional Counsel

_____

/S/ MELISSA J. FORD, FB: 0099401
Assistant Regional Conflict Counsel
P.O. Box 1019
Tallahassee, Florida 32302
Phone (850) 922-0179
Fax (850) 922-9970
mina.ford@rc1.myflorida.com