IN THE SUPREME COURT OF FLORIDA

CORTEZ HATTEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC15-22

RESPONDENT'S ANSWER BRIEF

ON REVIEW FROM THE FIRST DISTRICT COURT OF APPEAL

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TABLE OF CONTENTS

PAGE#

TABLE OF CITATIONS

STATUTES

RULES

PRELIMINARY STATEMENT

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

The record on appeal consists of eight volumes. "R" will designate the volume labeled record on appeal; "T" will designate the three-volumes of trial transcript; "S" will designate Appellant's sentencing hearing; and "M" will designate the supplemental volume containing Appellant's Rule 3.800(b)(2) motion. All references will be followed by appropriate page number. "IB" will designate Petitioner's Initial Brief, followed by any appropriate page number.

All bold-type emphasis is supplied, and all other emphasis is contained within original quotations unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by Amended Information with five counts: Count I Murder in the Second Degree; Count II Attempted 2nd Degree Murder; Count III Attempted 2nd Degree Murder; Count IV Aggravated Assault with Firearm; and Count V Possession of a Firearm by Convicted Felon. (R. 39-40). After trial, the jury returned a verdict of guilty of the lesser offense of Manslaughter as to Count I; not guilty as to Count II; guilty as charged as to Count III, with a special finding that he "actually possessed and discharged a firearm and caused death or great bodily harm"; not guilty as to Count IV; and guilty as charged as to Count V. (R. 77-80). On Count III, Petitioner was sentenced to 40 years with a 25 year minimum mandatory sentence. (R. 85; SH. 13).

Petitioner filed an Amended Motion to Correct Sentencing Errors Pursuant to Rule 3.800(b)(2) and Memorandum of Law on October 8, 2013, pending the filing of the Initial Brief in his direct appeal. (M. 169-91). In his motion, Petitioner challenged the imposition of certain costs and the legality of his 40 year prison sentence, with a 25 year minimum mandatory term, under Florida's 10-20-Life statute. (M. 172, 176-79). The trial court entered a written Order Granting in Part "Amended Motion to Correct Sentencing Error" on February 19, 2014, outside of the 60 day time frame to rule; the trial court denied the claim regarding the legality of Petitioner's sentence. (M. 192-93).

In its written opinion granting Petitioner's motion for rehearing, issued on December 16, 2014, the First District Court of Appeal wrote the following on the current issue:

> 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,[1] Fourth,[2] and Fifth[3] 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.

Hatten v. State, 152 So. 3d 849, 850 (Fla. 1st DCA 2014).

This Court accepted jurisdiction on October 14, 2015, after lifting the stay imposed on January 8, 2015, pending the disposition of *Kelly v. State*, SC14-916[4], and receiving briefs on jurisdiction.

SUMMARY OF ARGUMENT

The First District Court of Appeal certified conflict between the instant case and *Wiley v. State*, 125 So. 3d 235 (Fla. 4th DCA 2013), amongst other

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[1] *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).

[2] *Levine v. state*, 162 So. 3d 106 (Fla. 4th DCA 2014); *Antoine v. State*, 138 So. 3d 1064, 1078 (Fla. 4th DCA 2014); *Walden v. State*, 121 So. 3d 660, 661 (Fla. 4th DCA 2013).

[3] *Wooden v. State*, 42 So. 3d 837, 837 (Fla. 5th DCA 2010); *Roberts v. State*, 158 So. 3d 618 (Fla. 5th DCA 2013); *McLeod v. State*, 52 So. 3d 784, 786 (Fla. 2010).

[4] This Court discharged *Kelly*, finding jurisdiction was improvidently granted on July 2, 2015.

cases from the Second, Fourth, and Fifth Districts, on the issue of whether a trial court can impose a sentence over the general statutory maximum for the degree of felony when imposing a minimum mandatory sentence pursuant to Florida's 10-20-Life statute that is less than the statutory maximum. The First District held that a trial court can do so, relying upon its opinion in *Kelly v. State*, 137 So. 3d 2 (Fla. 1st DCA 2014).

In *Kelly*, the First District held that the plain language of the statute, and this Court's holding in *Mendenhall v. State*, 48 So. 3d 740 (Fla. 2010), authorizes a sentence in addition to that selected as a minimum mandatory sentence, without regard to whether there was additional statutory authority for the sentence, as the Fifth District held was required in *Wiley*. It is the State's position that the First District was correct in its interpretation of the 10-20-Life statute and that the decision should be affirmed, while vacating the opposite reached in *Wiley*, and the other conflict cases.

ARGUMENT

ISSUE I: THE FIRST DISTRICT COURT OF APPEAL CORRECTLY DECIDED THAT WHEN A MINIMUM MANDATORY SENTENCE UNDER FLORIDA'S 10-20-LIFE STATUTE IS IMPOSED, THAT THE TRIAL COURT IS NOT THEN LIMITED TO A MAXIMUM SENTENCE UNDER THE GENERAL SENTENCING GUIDELINES. (RESTATED)

Standard of Review

The First District based its opinion in the instant case on its previous holding in *Kelly v. State*, 137 So. 3d 2, 6-7 (Fla. 1st DCA 2014), where the First District also certified conflict with *Wiley v. State*, 125 So. 3d 235 (Fla. 4th DCA 2013), on the grounds that the First District disagreed with the interpretation of § 775.087(2)(b), Florida Statutes, taken by the Fourth District. *See Hatten*, 152 So. 3d at 850; *Kelly*, 137 So. 3d at 6. Therefore, the State would assert that this is an issue of statutory construction that this Court should review *de novo*. *See Hobbs v. State*, 999 So. 2d 1025, 1027 (Fla. 2008)("This Court reviews *de novo* a district court's decision on an issue of statutory interpretation.")(citing *McDonald v. State*, 957 So. 2d 605, 610 (Fla. 2007)).

Merits

Petitioner argues the First District Court of Appeal erred as a matter of law in ruling that § 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. (IB. 6). Petitioner asserts the First District's holding is "an incorrect reading of the sentencing framework of Chapter 775 of the

Florida Statutes." (IB. 6). It is the State's position that the First District's reading of the statutory section is correct, but if this Court determines otherwise, then there is a clear statutory ambiguity for which the State would assert the First District's interpretation lends credence; Petitioner also asserts that if this Court does not find that § 775.087(2), Florida Statutes, is unambiguous, then he recognizes that there may be ambiguities in the interplay of §§ 775.087(2) and 775.082, Florida Statutes.

1. Chapter 775 of the Florida Statutes

In the instant case, Petitioner's conviction at issue is Count III, where he was convicted by a jury of attempted second degree murder with a special finding that he "actually possessed and discharged a firearm and caused death or great bodily harm." (R. 77-80). Attempted second degree murder is a second degree felony, but due to his use of the firearm and the reclassification portion of the statute, Petitioner's conviction was reclassified to a first degree felony:

> Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant carries, displays, uses, threatens to use, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified as follows:
>
> (a) In the case of a felony of the first degree, to a life felony.
>
> (b) In the case of a felony of the second degree, to a felony of the first degree.
>
> (c) In the case of a felony of the third degree, to a felony of the second degree.

§ 775.087(1)(a)-(c), Florida Statutes.

The general sentencing statute, § 775.082,(3)(b)1., Florida Statutes, provides: "For a felony of the first degree, 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." However, because the jury made a special finding that Petitioner "actually possessed and discharged a firearm and caused death or great bodily harm," he qualified for sentencing under Florida's 10-20-Life statute, specifically § 775.087, (a)3., Florida Statutes, which provides:

> Any person who is convicted of a felony or an attempt to commit a felony listed in sub-subparagraphs (a)1.a-q., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a "firearm" or "destructive device" as defined in s. 790.001 and, as the result of the discharge, death or great bodily harm was inflicted upon any person, the convicted person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.

The statutory scheme goes on to provide in subsections (2)(a)3.(b)-(d), respectively:

> (b) Subparagraph (a)1., subparagraph (a), or subparagraph (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. . . .
>
> . . .
>
> (c) If the minimum mandatory terms of imprisonment imposed pursuant to this section exceed the maximum sentences authorized by s. 775.082, s. 775.084, or the Criminal Punishment Code under chapter 921, 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, s. 775.084, or the Criminal Punishment Code under

> chapter 921, then the sentence imposed by the court must include the mandatory minimum term of imprisonment as required in this section.
>
> (d) It is the intent of the Legislature that offenders who actually possess, carry, display, use, threaten to use, or attempt to use firearms or destructive devices be punished to the fullest extent of the law, . . .

2. The conflict between the districts

In ruling on the instant case, the First District relied upon its holding in *Kelly v. State*, 137 So. 3d 2, 6-7 (Fla. 1st DCA 2014), in affirming Petitioner's sentence. In *Kelly*, The First District was tasked with reviewing two issues, one was whether the trial court reversibly erred by imposing, on resentencing, a minimum mandatory sentence that exceeded the original sentence. *Id.* at 2. Kelly was sentenced to 40 year terms of imprisonment on each of his two convictions for aggravated battery, with a 25 year minimum mandatory sentence pursuant to Florida's 10-20-Life statute. *Id.* 2-3.

Kelly filed a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) alleging, amongst other grounds, that his 40 years sentence was illegal because his sentence could not exceed the 25 year minimum mandatory imposed on a second degree felony. *Id.* at 3 (citing *Mendenhall v. State*, 48 So. 3d 740 (Fla. 2010) & *Wiley v. State*, 125 So. 3d 235 (Fla. 4th DCA 2013)). The trial court found Petitioner's claim had merit. *Id.* at 3-4. However, the First District found to the contrary, noting:

> 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.

Id. at 6.

The First District reasoned that "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." *Id.* The First District went on to note that this reasoning was supported by the plain language of § 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." *Id.* (emphasis supplied).

The First District explained its interpretation, which will be discussed in further detail below:

> Unlike the Court in *Wiley*, as we read the statute, the phrase "as authorized by law," as used in the 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 maximum sentence authorized by law but for the 10-20-Life enhancement. In support of this 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.

As noted by the opinion in the instant case, other districts have held

contrary to the First District on this issue. *See 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. 5th 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).

3. The First District Court of Appeal's interpretation of the 10-20-Life statute is correct.[5]

As noted, in *Kelly*, the First District reasoned that the Fourth District's interpretation that a sentence above a mandatory minimum can only be imposed when authorized by a sentence enhancer was in error. 137 So. 3d at 6. The First District's rationale was based upon this Court's prior precedent and the logic it dictates. Specifically, this Court held in *Mendenhall* that "the trial court has discretion under section 775.087(2)(a)(3) to impose a mandatory minimum of twenty-five years to life, even if the mandatory minimum exceeds the statutory maximum [of thirty years] provided for in section 775.082." 48 So. 3d at 742. Therefore, the First District determined that pursuant to the holding in *Mendenhall*, it would seem "logical" that a trial court could impose a total sentence that would otherwise exceed the general maximum sentence set out in § 775.082, Florida Statutes, when sentenced pursuant to Florida's 10-20-Life statute. *Kelly*, 137 So. 3d at 6.

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[5] Petitioner points out in his Initial Brief that the State acknowledged in its Answer Brief in *Kelly*, and at oral argument, that the First District erred when interpreting § 775.087(2)(b), Florida Statutes. However, the issue to be determined by *Kelly* was not the exact issue being decided in the instant case. Further, because this Court declined jurisdiction in *Kelly*, the issue was never decided. Therefore, the State, upon further consideration, has reviewed the issue in this case, which provides a better posture for the issue to be decided, and argues that the First District's interpretation was, in fact, correct.

The First District reasoned that this rationale is not only logical, but is also supported by the plain language of § 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*. . . .

(emphasis supplied). The First District held that the phrase "as authorized by the law" does not refer to an external sentencing authorization, such as an enhancement, but instead "refers to the maximum sentence authorized by law but for the 10-20-Life enhancement." *Id*. at 6. The Court indicated that this interpretation is supported by the fact that the statute also reads "pursuant to *other applicable law*" in regards to the death penalty, which is clearly a reference to external authority. *Id*. Therefore, if the Legislature intended for the "authorized by law" phrase to refer to an external sentencing-enhancing statute, it would have provided for such. *Id*. Despite Petitioner's contention that the First District's interpretation allows for there to be a sentence that both allows the imposition of a minimum mandatory and an additional sentence of the trial court's choosing, the First District's holding would be that a trial court has the discretion to impose a minimum mandatory of up to life, plus the maximum of 30 additional years.

The State asserts this interpretation is a sound reading of the statutory scheme. The statute clearly states that a trial court can impose a longer sentence that is in addition to the minimum mandatory sentence that is required to be imposed under the 10-20-Life statute. This Court's holding in *Mendenhall* lends credence to the State's position: "we hold that the specific

provisions of the 10-20-Life statute with regard to mandatory minimums control over the general provisions of section 775.082 regarding statutory maximums." 48 So. 3d at 742. This holding is partially predicated upon the "Legislature's intent to punish those offenders who possess or use firearms to the fullest extent of the law." *Id.* "'A court's purpose in construing a statute is to give effect to legislative intent, which is the polestar that guides the court in statutory construction.'" *Id.* at 747 (quoting *Larimore v. State*, 2 So. 3d 101, 106 (Fla. 2008)). This Court clearly noted, "in enacting the 10-20-Life statute, the Legislature 'has very clearly mandated that it is the policy of this State to deter the criminal use of firearms.'" *Id.* at 746 (quoting *McDonald v. State*, 957 So. 2d 605, 611 (Fla. 2007)).

Therefore, it is the State's position that the First District's interpretation of § 775.087(2)(b), Florida Statutes, is correct and gives full effect to the Legislature's intent. Furthermore, the First District's interpretation flows logically from this Court's prior precedent. However, if this Court determines otherwise, the State would posit that if the statute is ambiguous, which is partially asserted by Petitioner, then the appropriate remedy would be to adopt the reasoning set out by the First District for the reasons set out above.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm the First District Court of Appeal's decision in the instant case and quash the Fourth District Court of Appeal's decision in *Wiley*.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by ELECTRONIC MAIL on January 14, 2016: 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,
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