IN THE SUPREME COURT OF FLORIDA

CASE NO. SC16-1712
L.T. CASE NO. 4Dl5-2596

ROBIN EUSTACHE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent. /

PETITIONER'S INITIAL BRIEF ON THE MERITS

On Discretionary Review From a Decision
of the Fourth District Court of Appeal

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STATEMENT OF THE CASE AND FACTS[1]

A. Mr. Eustache's Youthful-Offender Sentence and Revocation of Probation.

In 2006, Robin Eustache entered a plea to robbery with a firearm, which, as to adult offenders, carries a 10-year minimum-mandatory sentence enhancement under Florida's 10-20-Life statute. (R. 1:57-61); *see* § 775.087(2)(a)1., Fla. Stat. (2005). Mr. Eustache, however, was sentenced as a youthful offender to four years in prison followed by two years' probation because he was younger than 21 at that time (19 at sentencing, and 18 at the time of the offenses) and had not previously been sentenced as a youthful offender. (R. 1:51-52, 72-74).

In 2010, as a 24-year-old, Mr. Eustache violated probation by committing two drug-related offenses (possession of less than 20 grams of marijuana and possession of cocaine with intent to sell). (R. 1:78-80). After entering a plea admitting the violation, his probation was revoked, and he was sentenced to 15 years in prison. (R. 1:90-91, 93, 95, 97, 118).

Before his 2006 youthful-offender plea and sentence, Mr. Eustache had no prior juvenile or adult criminal history. (R. 1:50-51, 72). In addition, the 2010

[1] The two-volume Record on Appeal received from the Fourth District Court of Appeal is cited as follows: (R. Vol.:Page).

drug charges that led to Mr. Eustache's violation of probation were later dismissed. (R. 2:281, 339-40).

Proceeding *pro se*, Mr. Eustache moved for relief under Florida Rule of Criminal Procedure 3.850, and later rule 3.800(a), contending that his counsel was ineffective for misadvising him as to the potential sentence he faced and that his 15-year sentence was illegal. (R. 1:122-23). After the Fourth District Court of Appeal affirmed Mr. Eustache's 15-year sentence,[2] new counsel drafted another rule 3.850 motion, as well as an addendum and supplemental memorandum. (R. 1:154-79, 191-204; 2:205-08, 210-17).

An evidentiary hearing was held in November 2013, after which the trial court allowed Mr. Eustache to withdraw his plea because he was not correctly apprised of the potential impact of a 10-year minimum-mandatory sentence enhancement. (R. 2:272-302, 332-64). During that hearing, Mr. Eustache's probation officer, Trinette A Clark, testified that other than the two new drug offenses (which were later dismissed), Mr. Eustache was a model probationer. (R. 2:288-89, 349-50).

Mr. Eustache later entered an open plea to the probation violation. (R. 2:259-61). The parties, however, incorrectly advised the court that, if it

[2] *Eustache v. State*, 83 So. 3d 784 (Fla. 4th DCA 2011).

revoked Mr. Eustache's probation, it was required to impose at least the 10-year minimum-mandatory sentence. (R. 2:219-56, 275-76, 299-301, 337-41). The court revoked probation and sentenced Mr. Eustache to 15 years in prison with a 10-year minimum-mandatory sentence enhancement. (R. 2:259-66, 301, 362). No direct appeal was taken.

Mr. Eustache later sought relief under rule 3.850, presenting several grounds for relief:

> (1) his plea was involuntary because counsel misadvised him that the court was required to impose the minimum-mandatory sentence enhancement;
>
> (2) his counsel was ineffective for incorrectly advising the court that it was required to impose the minimum-mandatory sentence enhancement; and
>
> (3) his sentence is illegal, either because the court was not permitted to impose the minimum-mandatory sentence enhancement, or because the court erroneously believed that it was required to impose the minimum-mandatory sentence enhancement. Mr. Eustache asserted that the imposition of this sentence enhancement was prohibited under Florida law.

(R. 2:305-12; *see also* R. 2:370-76).

The trial court summarily denied Mr. Eustache's motion. (R. 2:366-68; *see also* R. 2:380).

B. Mr. Eustache's Appeal To The Fourth District.

Mr. Eustache appealed that denial to the Fourth District Court of Appeal. (R. 2:382-84). In an *en banc* decision,[3] and over the dissent of two judges, the Fourth District receded from its decision in *Blacker v. State*, 49 So. 3d 785 (Fla. 4th DCA 2010), which had followed this Court's decision in *State v. Arnette*, 604 So. 2d 482 (Fla. 1992), and held that "[u]nless the legislature clearly states otherwise, youthful offenders maintain youthful offender status even when they violate a condition of community control." *Blacker*, 49 So. 3d at 789. *Blacker* further held that even "after violating supervision with a substantive violation, a youthful offender must be sentenced pursuant to the youthful offender [act]," under which "minimum mandatory penalties do not apply." *Id.* at 789.

The *Eustache* majority disagreed and, instead, held that, once a youthful offender substantively violates probation or community control, a trial court has discretion as to whether to impose minimum-mandatory sentence enhancements on the offender regarding the original underlying offense(s). 199 So. 3d at 485-90. In doing so, it relied on the Second District's split decision in *Yegge v. State*, 186 So. 3d 553 (Fla. 2d DCA 2015), as well as the Fourth District's decision in *Goldwire v.*

[3] *Eustache v. State*, 199 So. 3d 484 (Fla. 4th DCA 2016).

State, 73 So. 3d 844 (Fla. 4th DCA 2011), which had been in direct tension with *Blacker*.

C. The Fourth District's Certification Of Conflict And A Question Of Great Public Importance.

The Fourth District affirmed the sentence imposed below, including the application of an adult minimum-mandatory sentence enhancement. *Eustache*, 199 So. 3d at 490. It also certified direct conflict with the Fifth District's decision in *Christian v. State*, 84 So. 3d 437, 442 (Fla. 5th DCA 2012), *rev. denied*, 134 So. 3d 446 (Fla. 2014), and certified the following question of great public importance:

> WHERE A DEFENDANT IS INITIALLY SENTENCED TO PROBATION OR COMMUNITY CONTROL AS A YOUTHFUL OFFENDER, AND THE TRIAL COURT LATER REVOKES SUPERVISION FOR A SUBSTANTIVE VIOLATION AND IMPOSES A SENTENCE ABOVE THE YOUTHFUL OFFENDER CAP UNDER SECTIONS 958.14 AND 948.06(2), FLORIDA STATUTES, IS THE COURT REQUIRED TO IMPOSE A MINIMUM MANDATORY SENTENCE THAT WOULD HAVE ORIGINALLY APPLIED TO THE OFFENSE?

Eustache, 199 So. 3d at 490.

Mr. Eustache timely invoked this Court's discretionary jurisdiction. *See* (Acknowledgement of New Case in SC16-1712 –Filing # 46825587).

SUMMARY OF THE ARGUMENT

Under a distinct sentencing scheme, the Legislature has mandated that those sentenced as youthful offenders be treated differently than adults. Indeed, youthful-offender status cannot later be revoked as to the underlying offense(s) of conviction. Under *State v. Arnette*, 604 So. 2d 482 (Fla. 1992), that remains true even if the youthful offender substantively violates probation or community control. Upon such a violation, section 958.14, Florida Statutes, authorizes a trial court to impose a period of incarceration no longer than the maximum sentence that would originally have applied to the underlying offense at the time of the initial youthful-offender sentencing.

Contrary to the Fourth District's analysis and holding, section 958.14 does not authorize the imposition of unlimited adult sentencing enhancements, including minimum-mandatory enhancements under the 10-20-Life statute. Nothing in the language of the Youthful Offender Act suggests that such enhancements are permissible. Indeed, applying such enhancements would nullify significant benefits of the Act such as the Department of Corrections' recommendations of modifications or reductions of a youthful offender's sentence "for successful participation in the youthful offender program." § 985.04(2)(d), Fla. Stat.

Using *Arnette*'s terminology, the Legislature has not "clearly stated" that adult enhancements may be imposed on youthful offenders who violate probation.

The Act's specific provisions prevail over those included in general, adult sentencing provisions, and youthful offenders are not subject to sentences encompassing the "maximum exposure" of an adult under the law, but only to the "maximum sentence" for the offense – terminology that does not include sentence enhancements.

The minimum-mandatory sentence enhancement imposed under the 10-20-Life statute was therefore erroneously applied to Mr. Eustache. The Fourth District erred by misinterpreting the Act's plain language to afford trial courts discretion to impose sentence enhancements on youthful offenders. Indeed, it failed even to consider *Arnette*.

Even if that error were not apparent from a plain reading of the Act, however, application of other principles of statutory construction make the error clear. In particular, the rule of lenity would apply, and require the reasonable reading most favorable to Mr. Eustache.

Further, even if this Court disagrees with Mr. Eustache that the Fourth District's interpretation of the Youthful Offender Act was erroneous, that court erred in an additional manner. While the Fourth District acknowledged that the trial court failed to properly comprehend its discretionary sentencing authority – under which it was <u>not</u> required to impose a minimum-mandatory term – the Fourth District nevertheless failed to reverse and remand for resentencing so that

the trial court could decide whether to exercise its discretion. That failure to reverse and remand for resentencing was also reversible error. The Fourth District impermissibly guessed that the trial court would have imposed the minimum-mandatory sentence instead of exercising its discretion to impose a sentence that would not interfere with other significant benefits of the Act.

This Court should answer the certified question in the negative, quash the decision below, and remand with directions that Mr. Eustache be resentenced in conformity with a proper interpretation of Florida's Youthful Offender Act.

ARGUMENT

I. THE YOUTHFUL OFFENDER ACT DOES NOT AUTHORIZE ENHANCED ADULT SENTENCING – INCLUDING MINIMUM-MANDATORY SENTENCES – WHEN YOUTHFUL OFFENDERS SUBSTANTIVELY VIOLATE PROBATION.

A. Standard of Review – *De Novo*.

A motion to correct a sentencing error involves a pure question of law and is subject to *de novo* review. *Pitts v. State*, 202 So. 3d 882, 884 (Fla. 4th DCA 2016). Further, this Court reviews questions of statutory interpretation *de novo*. *E.A.R. v. State*, 4 So. 3d 614, 629 (Fla. 2009).

B. The Youthful Offender Act.

The Legislature adopted the Youthful Offender Act in 1978, *see* chapter 78-84, Laws of Florida, and thereby created an alternative sentencing scheme available to judges when sentencing a defendant younger than 21 years of age. § 958.04(1), Fla. Stat. The Legislature's express statutory intent was "to improve the chances of correction and successful return to the community of youthful offenders" and "to provide an additional sentencing alternative to be used in the discretion of the court when dealing with [youthful] offenders" who can no longer be treated as juveniles. § 958.021, Fla. Stat.; *see also State v. Watts*, 558 So. 2d 994, 997 (Fla. 1990) (noting that the Act was intended to provide a "sentencing alternative" and that its limitations on length of confinement are a primary benefit

of this alternative scheme). The Act is currently comprised of sections 958.01-958.15, Florida Statutes.

As originally enacted, the Act applied to offenders who were younger than 21 at the time of their offense(s), but the Legislature amended the Act in 2008 to apply only to offenders who are younger than 21 at the time of sentencing. *Jackson v. State*, 191 So. 3d 423, 426 (Fla. 2016) (citing § 958.04(1)(b), Fla. Stat. (2008)). Youthful-offender sentencing is unavailable for those guilty of a capital or life felony, *see* section 958.04(1)(c), Florida Statutes, or those sentenced under the Youthful Offender Act for a prior offense. *Id.*

As a primary benefit of the Act, it currently limits to six years both the original sentence and any sentence imposed after a technical or non-substantive probation violation. *See* § 958.14, Fla. Stat. Older versions of the Act imposed a six-year cap on all youthful-offender sentences. *See, e.g.*, § 958.14, Fla. Stat. (1989) ("However, no youthful offender should be committed to the custody of the department for such violation for a period longer than 6 years or for a period longer than the maximum sentence for the offense for which he was found guilty, whichever is less . . . .").

Under the prior version of section 958.14, Florida Statutes, a trial court sentencing a youthful offender who had violated probation – even in a substantive manner – could not impose a sentence exceeding six years when addressing the

underlying conviction. *See Watts*, 558 So. 2d at 997-98. In 1990, the Legislature added language permitting sentencing above this cap for substantive probation violations, but otherwise kept the operative language substantially the same. That continues to be the situation today. *See* ch. 90-208, § 19, at 1161, Laws of Fla.; § 958.14, Fla. Stat. (2016).

Moreover, consistent with the Legislature's express statutory intent, Florida's minimum-mandatory sentencing statutes do not apply to a sentence originally imposed under the Act. *See, e.g.*, *Mendez v. State*, 835 So. 2d 348 (Fla. 4th DCA 2003); *State v. Wooten*, 782 So. 2d 408, 409-10 (Fla. 2d DCA 2001) (holding that 10-20-Life sentence enhancements are inapplicable to a youthful offender's sentence at the time of the original sentencing). This is because a sentence imposed under the Act is "[i]n lieu of other criminal penalties authorized by law." *Mendez*, 835 So. 2d at 349 (quoting § 958.04(2), Fla. Stat.).

Indeed, youthful-offender status entails a heavier focus on rehabilitation, access to different reform, work, and education programs, and the use of different incarceration facilities separate from the adult prison population. *See, e.g.*, §§ 958.021, 958.045-.046, 958.09, 958.11-.12, Fla. Stat.; *Jackson*, 191 So. 3d at 428 ("The Youthful Offender statutes are the means to achieve the State's goal of providing rehabilitation to young offenders."). It is, thus, different in many ways

from Florida's approach to adult sentencing and imprisonment, which, in contrast, focuses on incapacitation, retribution, and deterrence.

Another significant aspect of the Act is that section 958.04(2)(d) permits the Department of Corrections to recommend that offenders have their sentences modified or reduced "for successful participation in the youthful offender program." *See also Flagg v. State*, 179 So. 3d 394, 397 (Fla. 1st DCA 2015) ("[T]he Act also carries certain benefits that include the availability of programs and the possibility of early release."). This potential reduction also applies to inmates who are not sentenced as youthful offenders, but who are nevertheless subsequently classified as youthful offenders by the Department of Corrections. *See* § 958.04(2)(d), Fla. Stat.

In sum, youthful-offender sentencing is an alternative sentencing structure imposed "'[i]n lieu of other criminal penalties authorized by law" to "improve the chances of correction and successful return to the community of youthful offenders." §§ 958.04(2), 958.021, Fla. Stat. Youthful offenders are meant to be treated differently than adults, and – as to the underlying offense(s) – that status continues even after a substantive probation violation. *Arnette*, 604 So. 2d 482-84. Thus, an interpretation of the Act that includes punitive minimum-mandatory sentence enhancements would be inconsistent with the Legislature's rehabilitative

intent and the Department of Corrections' recognized ability to recommend early release for successful youthful offenders.

C. The Act's Plain Text Does Not Authorize Minimum-Mandatory Sentences When Youthful Offenders Violate Probation.

Legislative intent is the polestar that guides statutory interpretation. *E.A.R.*, 4 So. 3d at 629. This Court discerns legislative intent primarily by examining the relevant statute or statutory scheme's plain text. *Id.* When the statute's language is clear and conveys a definite meaning, its plain meaning controls. *Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 439 (Fla. 2013). In addition, when an act contains related provisions addressing the same subject, they should be construed *in pari materia* to properly effectuate legislative intent. *See, e.g.*, *E.A.R.*, 4 So. 3d at 629. An act is to be interpreted to accomplish, rather than defeat, its purpose. *Dennis v. State*, 51 So. 3d 456, 461 (Fla. 2010).

Here, the primary statutory provision at issue is section 958.14, Florida Statutes, which provides:

> A violation or alleged violation of probation or the terms of a community control program shall subject the youthful offender to the provisions of s. 948.06. However, no youthful offender shall be committed to the custody of the department for a substantive violation for a period longer than the maximum sentence for the offense for which he or she was found guilty, with credit for time served while incarcerated, or for a technical or nonsubstantive violation for a period longer than 6 years or for a period longer than the maximum sentence

> for the offense for which he or she was found guilty, whichever is less, with credit for time served while incarcerated.[4]
>
> Section 948.06(2)(b), in turn, provides:
>
> If probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation or the offender into community control.

Long before the Fourth District issued the decision under review, this Court interpreted sections 948.06 and 958.14, Florida Statutes, in *State v. Arnette*, 604 So. 2d 482 (Fla. 1992). At that time, while section 958.14 included the broader, blanket six-year cap on all youthful-offender sentences (even those imposed after a substantive probation violation), section 948.06 included the same language that, upon revocation of probation or community control, the court may "impose any sentence which it might have originally imposed before placing the probationer or offender on probation or into community control." 604 So. 2d at 483. Further, *Arnette* also involved a youthful offender who violated the terms of probation or community control. *Id.*

There, this Court recognized that it "has always been clear that the legislature intended to treat youthful offenders differently than adults." *Id.* at 484.

[4] All emphasis is supplied unless otherwise noted.

In addition, *Arnette* held that, when addressing a sentence for the original conviction based on a violation of probation or community control, the proper inquiry is to "determine what sentence the trial judge could have imposed on [the offender] originally," and that, "[u]nless the legislature clearly states otherwise, youthful offenders maintain youthful offender status even when they violate a condition of community control." *Id.* at 483-84.

According to *Arnette*, "[s]ection 958.14 did not specifically authorize applying adult sanctions to a youthful offender[.]" *Id.* at 484. The same remains true today, with the only relevant substantive change being the Legislature's decision to lift the blanket six-year cap on youthful-offender sentences to permit, upon a substantive probation violation, the imposition of the "the maximum sentence" that the youthful offender could have originally received. However, even with that statutory revision, it remains clear that youthful-offender status continues as to the underlying conviction despite a substantive violation of probation or community control.

As Judge – now Justice – Lawson explained, writing for the Fifth District:

> In [*Arnette*], the Florida Supreme Court held that once a defendant is sentenced as a youthful offender, the sentencing features (and limitations) of the Youthful Offender Act apply to future sentencing proceedings on that same offense (*i.e.*, after a violation of probation). That principle is straightforward, and nothing in the Act has changed since *Arnette* to alter that broad holding.

Christian v. State, 84 So. 3d 437, 442 (Fla. 5th DCA 2012), *rev. denied*, 134 So. 3d 446 (Fla. 2014); *see also Long v. State*, 99 So. 3d 997, 998 (Fla. 5th DCA 2012) (same, and noting that "[a] defendant's status as a youthful offender matters in part because it affects the defendant's classification within the prison system and the programs and facilities to which the defendant can be assigned"); *Lee v. State*, 67 So. 3d 1199, 1202 (Fla. 2d DCA 2011) (holding that while a sentence in excess of the six-year cap was legal, youthful-offender status was improperly revoked, rendering the defendant's sentence illegal); *Hudson v. State*, 989 So. 2d 725, 726 (Fla. 1st DCA 2008) ("[T]he court may not change that [youthful-offender] status by way of revocation of probation or community control.").

In that same analysis, the Fifth District also cited with approval the Fourth District's prior decision in *Blacker v. State*, 49 So. 3d 785 (Fla. 4th DCA 2010) (receded from by the Fourth District in the *en banc* decision on review), for the proposition that the Act's sentencing limitations continue to apply to the underlying conviction even after a substantive probation violation. *Christian*, 84 So. 3d at 443-44 (citing *Blacker* with approval).

Under *Arnette*, and its interpretation of the text of sections 958.14 and 948.06, the proper analysis in imposing a sentence on the underlying conviction following a probation violation focuses on the incarcerative youthful-offender sentence that the trial court could have imposed originally consistent with the

terms of the Act. This is so because as to that conviction, youthful-offender status continues, "and nothing in the Act has changed since *Arnette* to alter that broad holding." *Christian*, 84 So. 3d at 442; *see also, e.g.*, *Randall v. State*, 182 So. 3d 854 (Fla. 4th DCA 2016) ("Nothing in the [Act] provides that youthful offender status melts away upon a revocation of probation imposed as part of a youthful offender sentence.").

Indeed, consistent with this point, Florida precedent provides that once the trial court exercises discretion to sentence an offender under the Youthful Offender Act, its "sentencing provisions . . . are the exclusive sanctions that may be imposed in a youthful offender sentence. . . . [I]t is prohibited from imposing sanctions other than those of the Youthful Offender Act." *Mendez*, 835 So. 2d at 349 (precluding imposition of adult minimum-mandatory sentence on youthful offender); *see also Dean v. State*, 476 So. 2d 318, 319 (Fla. 2d DCA 1985) (substantially similar); *Inman v. State*, 842 So. 2d 862, 863 (Fla. 2d DCA 2003) (holding mandatory fine unauthorized because "youthful offender sentencing provisions preempt the statutory penalties for the substantive offense"); *Wooten*, 782 So. 2d at 409-10 (10-20-Life sentence enhancements are inapplicable to a youthful offender's original sentence).

According to this case law, which based its analysis on the Act's text, "the youthful offender statute does not provide for mandatory minimum terms or the

imposition of fines in sentencing youthful offenders." *Mendez*, 835 So. 2d at 349 (citing § 958.04(2)(d), Fla. Stat. (2001)); *see also, e.g.*, *Christian*, 84 So. 3d at 442 ("none of Florida's minimum mandatory sentencing statutes apply to a sentence imposed pursuant to the Youthful Offender Act"). This is because a sentence imposed under the Act is "in lieu of other criminal penalties authorized by law." *Id.* (quoting § 958.04(2), Fla. Stat.).

Contrary to the Fourth District's analysis below – and that of the split decision in *Yegge v. State*, 186 So. 3d 553 (Fla. 2d DCA 2015) – sections 958.14 and 948.06 do not "clearly state" that adult minimum-mandatory sentencing enhancements apply to youthful offenders like Mr. Eustache upon revocation of probation. Judge Davis made this same point in his special concurrence in *Yegge* (which, in true import, was a dissent).

There, the analysis focused on the same 10-20-Life sentence-enhancement statute implicated here, section 775.087(2). Judge Davis explained that the majority improperly dismissed *Arnette*'s reasoning, which still applied in this context despite the fact that the prior version of section 958.14 included a blanket six-year sentencing cap. 186 So. 3d at 559-60 (Davis, J., specially concurring). The subsequent amendment of section 958.14 did not alter *Arnette*'s holding that the Act does "not specifically authorize applying adult sanctions to a youthful offender." *Id.* As Judge Davis recognized, "nothing in the post-*Arnette*

amendments to section 958.14 . . . changes this conclusion or authorizes limitless application of section 948.06(1) to youthful offender sentences following a substantive violation." 186 So. 3d at 560 (Davis, J., specially concurring).

Further, applying adult sentencing enhancements, absent a clear legislative directive, would negate significant benefits available to youthful offenders. For example, application of minimum-mandatory enhancements to youthful offenders like Mr. Eustache would render meaningless the Department of Corrections' recommendations of modifications or reductions of their sentences to permit early release. *See* § 958.04(2)(d), Fla. Stat. And, it is well-established that this Court avoids statutory interpretations that render legislative text meaningless or superfluous. *See, e.g.*, *E.A.R.*, 4 So. 3d at 634 n.32 (this Court avoids readings that would "render material portions of the legislative scheme and statute superfluous and meaningless" (collecting cases)).

Judge Davis also correctly disagreed with the reasoning of his colleagues in the *Yegge* majority (reasoning subsequently adopted by the Fourth District in the present case) that section 958.14 now provides an "unqualified" directive that, upon a substantive probation violation, youthful offenders may be resentenced with full adult enhancements available. *Id.* at 560-62. A significant qualification exists under preexisting case law – of which the Legislature was charged with knowledge and has not acted to alter via statutory amendment – as well as the second sentence

of section 958.14, which requires that "no youthful offender shall be" resentenced "for a substantive violation for a period longer than the maximum sentence for the offense for which he or she was found guilty." *Id.* at 560-61.

Since 1992, the Legislature has had several opportunities to modify *Arnette*'s interpretation of the Youthful Offender Act, but has not done so. This longstanding inaction "amounts to legislative acceptance or approval of . . . [the preexisting] judicial construction." *State v. Cable*, 51 So. 3d 434, 443 (Fla. 2010) (quoting *Goldenberg v. Sawczak*, 791 So. 2d 1078, 1081 (Fla. 2001)).

In addition, the present language – "maximum sentence" for the offense of conviction – is not synonymous with "a defendant's maximum exposure in a criminal case." The distinction is that a "maximum sentence" is determined under the statute applicable to the substantive offense; whereas, "maximum exposure" is determined by the maximum statutory sentence combined with other specific factors and the specific circumstances of the commission of the offense, which can trigger adult sentencing enhancements such as the 10-20-Life enhancements provided under section 775.087(2). *Yegge*, 186 So. 3d at 560-61 (Davis, J., specially concurring) (citing §§ 775.082(9)(a), .084, .087, Fla. Stat.); *see also* § 775.087(2)(c), Fla. Stat. (2005) (recognizing this distinction between "maximum sentence" and "maximum exposure" under sentencing enhancements: "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.").

Had the Legislature intended for adult sentence enhancements like minimum-mandatory terms to apply to youthful offenders, it could easily have included language clearly expressing that intent in section 958.14. It has not. The courts may not judicially insert that additional language. *See, e.g.*, *Townsend v. R.J. Reynolds Tobacco Co.*, 192 So. 3d 1223, 1232 (Fla. 2016) ("We are not at liberty to add words to statutes that were not placed there by the Legislature."); *St. Petersburg Bank & Trust Co. v. Hamm*, 414 So. 2d 1071, 1073 (Fla. 1982) ("[e]ven where a court is convinced that the legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity" (quoting *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693 (1918))).

Finally, Judge Davis correctly explained why the principal case law on which the *Yegge* majority relied was inapposite regarding youthful offenders and the attempted application of adult sentencing enhancements. Specifically, *Mendenhall v. State*, 48 So. 3d 740 (Fla. 2010), and *Lareau v. State*, 573 So. 2d 813 (Fla. 1991), were inapplicable because neither Mendenhall nor Lareau was sentenced as a youthful offender, and the sentences at issue in those cases were

original sentences, not ones imposed upon revocation of probation. *See Yegge*, 186 So. 3d at 561-62 (Davis, J., specially concurring).

In sum, consistent with *Arnette*, Judge Davis would have required a clear expression of intent from the Legislature before applying adult sentence enhancements to youthful offenders sentenced to an additional incarcerative term upon a substantive probation or community-control violation. *Id.* at 559-62. He was correct.

In the present case, below, Judges Conner and Forst agreed with Judge Davis' *Yegge* analysis regarding the distinction between "maximum sentences" and "maximum exposure." *Eustache*, 199 So. 3d at 491-92 (Conner & Forst, J.J., concurring in part and dissenting in part). They added that there "appears to be a good policy reason for not removing the benefits of the Youthful Offender Act upon imposing incarceration for a substantive violation of supervision, in that it continues the benefits of punishing young offenders differently [than adults], when appropriate." *Id.* at 491. That policy analysis is consistent with the Legislature's express statement of intent in section 958.021, Florida Statutes.

Judges Conner and Forst differed from Judge Davis, however, in their conclusion that this analysis merely afforded the trial court discretion "to impose or withhold any applicable [adult] minimum mandatory sentence" regarding a youthful offender sentenced on the original conviction after a substantive probation

violation. They did not explain how that discretionary approach can be reconciled with *Arnette* and the absence of clear language in sections 958.04 and 958.14 indicating that the Legislature intended for adult sentence enhancements to apply to youthful offenders. *See id.* at 491-92.

Under the Act, and case law, Mr. Eustache's youthful-offender status continued despite revocation of his probation. Further, the relevant statutes' plain text does not clearly authorize the imposition of adult sentence enhancements – for example a 10-year minimum-mandatory term – on youthful offenders who violate probation or community control.

Conversely, the Fourth District's decision below, as well as the Second District's decision in *Yegge* and the Fourth District's earlier decision in *Goldwire v. State*, 73 So. 3d 844 (Fla. 4th DCA 2011), were incorrectly decided. The analyses provided by this Court in *Arnette*, the Fourth District in *Blacker*, and the Fifth District in *Christian*, should instead apply to preclude imposing minimum-mandatory sentencing on a youthful offender like Mr. Eustache, who otherwise might have the opportunity for early release based on the Department of Corrections' recommendation. That is the proper result given the Act's plain text.

D. Even if the Act Were Ambiguous in this Regard, the Rule of Lenity and Other Canons of Construction Would Require This Court to Adopt the Reasonable Reading Most Favorable to Mr. Eustache.

The rule of lenity is a "fundamental tenet of Florida law regarding the construction of criminal statutes, which weighs in favor of the defendant." *State v. Weeks*, 202 So. 3d 1, 8 (Fla. 2016). While it is deemed a "canon of last resort," it is "not just an interpretative tool, but a statutory directive." *Kasischke v. State*, 991 So. 2d 803, 814 (Fla. 2008); § 775.021(1), Fla. Stat. ("The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused."). Under the rule of lenity, "[a]ny ambiguity or situations in which statutory language is susceptible to differing constructions must be resolved in favor of the person charged with an offense." *Weeks*, 202 So. 3d at 8 (emphasis in original).

If this Court determines that an ambiguity exists, it should apply the rule of lenity to continue the result under *Arnette*, *Blacker*, and *Christian* – *i.e.*, because the Legislature has not clearly indicated that adult sentence enhancements like minimum-mandatory terms apply to youthful offenders, and because youthful-offender status continues on the original conviction(s) despite a substantive probation violation, the Act should not be construed to allow imposition of minimum-mandatory terms on offenders like Mr. Eustache. If the Legislature

wishes to change that result, it should amend the Act. *See*, *e.g.*, *Conroy v. Aniskoff*, 507 U.S. 511, 528 (1993) (Scalia, J., concurring) ("The language of the statute is entirely clear, and if that is not what Congress meant then Congress has made a mistake and Congress will have to correct it.").

Moreover, additional principles of statutory construction favor this result. In particular, courts must construe a statutory provision together and in harmony with other related statutory provisions, and must avoid a construction that will place a statutory provision in conflict with another. *See, e.g.*, *Wakulla Cnty. v. Davis*, 395 So. 2d 540, 542 (Fla. 1981). In addition, "when the meaning of a statute is at all doubtful, the law favors a rational, sensible construction" that also preserves and promotes legislative intent. *Id.* at 543.

Precluding the imposition of adult minimum-mandatory sentence enhancements is the only construction that is sensible, avoids any possible conflict with other provisions of the Act, and promotes the Act's expressly stated twin goals of "improv[ing] the chances of . . . successful return to the community of youthful offenders" and "provid[ing] an additional sentencing alternative" for this class of offenders. In contrast, the Fourth and Second Districts' interpretations are not only contrary to the Act's express rehabilitative purpose, but also create potential conflict with other youthful-offender sentencing benefits not otherwise lost upon a violation of probation or community control, including the possibility

of early release based on a recommendation from the Department of Corrections. *See* § 958.04, Fla. Stat.; *see also Watts*, 558 So. 2d at 997 (limitations on length of confinement are a primary benefit of the youthful-offender sentencing alternative); *Flagg*, 179 So. 3d at 397 (the possibility of an early release is a significant benefit of the Act).

This Court's interpretation should comport with its prior decision in *Arnette* to avoid these additional problems posed by the Fourth and Second Districts' contrary constructions.

E. At a Minimum, this Case Should Be Remanded to the Trial Court So that It May Exercise the Sentencing Discretion that the Fourth District Acknowledged the Trial Court Possessed But Failed to Realize.

Below, the Fourth District majority acknowledged that the "trial court in this case . . . erroneously believed that it was required to impose at least the ten-year minimum mandatory sentence if it revoked Eustache's probation." 199 So. 3d at 490. It went on to explain that, "[c]ontrary to the State's arguments, there is no indication in the record that the trial judge was aware he had the option to revoke Eustache's probation and avoid the minimum mandatory sentence." *Id.*

Nevertheless, the Fourth District concluded that Mr. Eustache was not entitled to a remand so that the trial court could exercise the sentencing discretion that it incorrectly believed it lacked. It did so because the trial court ultimately

"imposed a sentence of fifteen years, more than the ten-year minimum mandatory." *Id.* In doing so, the Fourth District overlooked several points.

First, while it acknowledged that a similar error occurred in *Goldwire* – which required remand for resentencing – in attempting to distinguish *Goldwire*, the Fourth District overlooked that the *Goldwire* trial court also imposed a minimum-mandatory of 10 years and also sentenced the offender to a term in excess of the minimum-mandatory – there, a 20-year term. *See* 73 So. 3d at 845. Despite this, *Goldwire* required a remand for resentencing so that the trial court, in the first instance, could decide what sentence to impose under the correct view that it was not required to impose a minimum-mandatory term. *Id.* at 846-47.

Second, below, the Fourth District declined to enforce the applicable rule of law that when "the record suggests that the trial court mistakenly believed it had no discretion" as to the pertinent sentence, the case should be remanded for "the trial court [to] exercise its sentencing discretion and consider all sentencing alternatives." *Munnerlyn v. State*, 795 So. 2d 171, 171 (Fla. 4th DCA 2001); *see also, e.g.*, *Pitts*, 202 So. 3d at 884 ("Resentencing is warranted where the defendant received a legal sentence, but the trial court misapprehended its sentencing discretion under the relevant statutes."); *Colletta v. State*, 126 So. 3d 1090, 1091 (Fla. 4th DCA 2012) ("this court has remanded for resentencing where the defendant received a legal sentence but the trial court failed to exercise the

discretion it had under the statutes"); *Siler v. State*, 135 So. 3d 1126, 1127 (Fla. 1st DCA 2014) (acknowledging that the trial court "may impose the same sentence on remand," but nevertheless remanding for resentencing because "the court did not appear to be aware of all of its sentencing options").

As *Goldwire* explained, "[w]hile the trial court might issue the same sentence, we remand to allow [it] to properly consider all sentencing options with the knowledge that it has discretion, rather than being of the [mistaken] belief that it is required to sentence in a particular way." 73 So. 3d at 846-47.

At a minimum, and as a final, alternative point, the same should hold true here. Remand is necessary for resentencing even if this Court agrees that the trial court has discretion to impose a minimum-mandatory enhancement on a youthful offender like Mr. Eustache. The trial court was mistaken as to whether it could avoid imposing a minimum-mandatory enhancement, and we would simply be guessing that the court – upon an accurate view of the law – would impose the same sentence once again. There is no need to guess.

Further, allowing the minimum-mandatory sentence to remain in effect where the trial court might choose not to impose it would interfere with later efforts by the Department of Corrections to recommend a reduced sentence for Mr. Eustache based on his "successful participation in the youthful offender program." § 958.04(2)(d), Fla. Stat. The Fourth District overlooked that point as well.

CONCLUSION

Petitioner, Robin Eustache, respectfully requests that this Court answer the certified question in the negative, quash the Fourth District's decision below, and remand with instructions that he is to be resentenced in conformity with a proper interpretation of Florida's Youthful Offender Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was e-filed with the Clerk of Court through the Florida Courts eFiling Portal and is being served on this 24th day of April, 2017, on counsel of record listed below via transmission of notices of electronic filing generated by the Florida Courts eFiling Portal and via e-mail to:

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WE CERTIFY that this brief complies with Florida Rule of Appellate Procedure 9.210 by using Times New Roman 14-point font.

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APPENDIX

199 So.3d 484
District Court of Appeal of Florida,
Fourth District.

Robin EUSTACHE, Appellant,
v.
STATE of Florida, Appellee.

No. 4D15–2596.
|
Aug. 31, 2016.

Synopsis

Background: Defendant filed motion for post-conviction relief, following revocation of his youthful offender probation and resentencing. The Circuit Court, Fifteenth Judicial Circuit, Palm Beach County, Jack Schramm Cox, J., denied motion. Defendant appealed.

Holdings: The District Court of Appeal held that:

[1] a court is not bound to sentence a defendant within youthful offender limits after his youthful offender probation has been revoked, receding from *Blacker v. State*, 49 So.3d 785, and

[2] defendant was not entitled to post-conviction relief based on trial court's erroneous belief that it was required to impose mandatory minimum sentence.

Affirmed.

Conner, J., filed opinion concurring in part and dissenting in part, in which Forst, J., concurred.

West Headnotes (5)

[1] Infants
Nature, purpose, and goals

Infants
Factors and considerations in general

The Youthful Offender Act was created as an alternative sentencing modality for criminal defendants younger than 21 years of age at the time of sentencing, if the crime charged is not a capital or life felony and the defendant has not been previously sentenced as a youthful offender. West's F.S.A. § 958.01 et seq. (Repealed).

Cases that cite this headnote

[2] Infants
Length or duration of sentence

Under the Youthful Offender Act, minimum mandatory sentences do not apply to an initial youthful offender sentence. West's F.S.A. § 958.01 et seq. (Repealed).

Cases that cite this headnote

[3] Infants
Sentence or Punishment

Infants
Violations and revocation;proceedings

Once a youthful offender sentence is imposed at initial sentencing, a defendant retains certain benefits of the Youthful Offender Act, even after probation or community control has been revoked and incarceration above the cap has been imposed. West's F.S.A. § 958.01 et seq. (Repealed).

Cases that cite this headnote

[4] Infants
Violations and revocation;proceedings

Upon a substantive violation of youthful offender supervision, the trial court has the discretion either to sentence under the cap provisions of the statute governing judicial disposition of youthful offenders, or to impose any sentence it could have imposed when the defendant was originally sentenced, regardless of the defendant's youthful offender designation, under the statute governing violations of probation or community control; where the trial court chooses the second option, and the original sentence that could have been imposed was a minimum mandatory sentence, then that sentence must be imposed upon revocation of supervision; receding from *Blacker v. State,*

49 So.3d 785. West's F.S.A. §§ 948.06(2), 958.04(2).

Cases that cite this headnote

[5] Criminal Law
Sentence and punishment

Defendant was not entitled to post-conviction relief based on trial court's erroneous belief, and any incorrect advice of counsel, that court was required to impose at least minimum mandatory sentence if it revoked defendant's youthful offender probation, and court's lack of awareness that it had option to revoke defendant's probation and avoid minimum mandatory sentence by imposing sentence within the youthful offender cap provisions, where trial court imposed sentence of more than the minimum mandatory, and thus did not feel constrained by counsel's advice and was not inclined to impose sentence within the youthful offender cap provisions. West's F.S.A. §§ 948.06(2), 958.04(2).

Cases that cite this headnote

***485** Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jack Schramm Cox, Judge; L.T. Case No. 2005CF009576BMB.

Attorneys and Law Firms

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EN BANC

PER CURIAM.

In this appeal from the denial of a rule 3.850 motion for post-conviction relief, we address the applicability of minimum mandatory sentencing provisions to defendants who are initially sentenced to probation or community control as youthful offenders, but whose supervision is later revoked for a substantive violation. The case law from this district and others appears to be conflicting and unsettled.

We interpret the applicable statutory provisions to grant discretion to trial ***486** judges, upon revocation of youthful offender supervision for a substantive violation, to either continue with a youthful offender cap sentence or impose any sentence that might have been originally imposed without regard to the defendant's youthful offender status. If the court exercises its discretion not to impose a youthful offender cap sentence upon revocation, then where the offense originally required a minimum mandatory sentence, the court must impose that sentence.

Because the trial court in this case exercised its discretion not to impose a youthful offender cap sentence upon revocation of appellant's probation, it properly imposed the minimum mandatory sentence for the offense. We affirm the denial of appellant's motion for post-conviction relief.

Factual Background and Trial Court Proceedings

In 2006, Eustache entered a plea to robbery with a firearm, which carries a ten-year minimum mandatory sentence. § 775.087(2)(a)1., Fla. Stat. (2005). Instead, however, he was sentenced as a youthful offender to four years in prison followed by two years of probation. He subsequently violated probation by committing two new drug offenses. After entering a plea admitting the violation, his probation was revoked, and he was sentenced to fifteen years in prison.

Eustache moved for relief under Florida Rule of Criminal Procedure 3.850, contending that his trial counsel was ineffective for not advising him that he was subject to a ten-year minimum mandatory sentence upon revocation of probation. The trial court granted the motion and allowed Eustache to withdraw his plea.

In 2013, represented by new counsel, Eustache entered an open plea to the violation of probation. The parties advised the court that, if it revoked Eustache's probation, it was required to impose at least the ten-year minimum mandatory sentence. The court revoked probation and sentenced Eustache to fifteen years in prison with a ten-year minimum mandatory sentence. No direct appeal was taken.

Eustache moved for relief under rule 3.850 a second time, asserting three alternative grounds for relief: (1) his plea was involuntary because counsel misadvised him that the court was required to impose the minimum mandatory sentence; (2) his counsel was ineffective for advising the court that it was required to impose the minimum mandatory sentence; and (3) his sentence is illegal, either because the court was not permitted to impose the minimum mandatory sentence, or because the trial court erroneously believed that it was required to impose the minimum mandatory sentence. Eustache asserted that the imposition of the minimum mandatory sentence was either prohibited under our decision in *Blacker v. State,* 49 So.3d 785 (Fla. 4th DCA 2010), or discretionary under our decision in *Goldwire v. State,* 73 So.3d 844 (Fla. 4th DCA 2011).

The State contended that both Eustache and the trial court were properly advised, pursuant to *Goldwire,* that once the trial court exercised its discretion to revoke Eustache's probation and impose a sentence above the youthful offender cap, it was required to impose at least the minimum mandatory sentence. The trial court adopted the State's reasoning in summarily denying the motion. Eustache gave notice of appeal.

Appellate Analysis

[1] **[2]** The Youthful Offender Act was created as an alternative sentencing modality for criminal defendants younger than twenty-one years of age at the time of sentencing, if the crime charged is not a capital or life felony and the defendant has ***487** not been previously sentenced as a youthful offender. *See Christian v. State,* 84 So.3d 437, 441 (Fla. 5th DCA 2012). A sentence imposed under the Act is "[i]n lieu of other criminal penalties authorized by law." § 958.04(2), Fla. Stat. (2005). The most significant benefit to being sentenced as a youthful offender is a cap on the initial sentence of either six years or the maximum sentence for the offense, whichever is less, with regards to incarceration, supervision on probation or community control, or a combination of both. *Id.* Minimum mandatory sentences do not apply to an initial youthful offender sentence. *Mendez v. State,* 835 So.2d 348, 349 (Fla. 4th DCA 2003).

Sentencing of a youthful offender upon revocation of probation or community control supervision is governed by sections 948.06 and 958.14, Florida Statutes. Section 958.14 provides that "[a] violation ... of probation or the terms of a community control program shall subject the youthful offender to the provisions of s. 948.06." § 958.14, Fla. Stat. (2005).[1] In turn, section 948.06 provides, in part:

> *If probation or community control is revoked, the court shall* adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and *impose any sentence which it might have originally imposed before placing the probationer on probation or the offender into community control.*
>
> § 948.06(2)(b), Fla. Stat. (2005) (emphasis added); *see also* § 948.06(2)(e), Fla. Stat. (2005).

These two statutory sections read together mean that, upon revoking the probation or community control supervision of a youthful offender for a substantive violation, the trial court has two choices. First, if an incarcerative sentence is still available under the cap provisions of section 958.04(2), the court may continue to sentence under the cap provisions. Alternatively, the court may impose any sentence that could have been imposed at the initial sentencing, regardless of the defendant's youthful offender status.

[3] Once a youthful offender sentence is imposed at initial sentencing, a defendant retains certain benefits of the Act, even after probation or community control has been revoked and incarceration above the cap has been imposed. *See Christian,* 84 So.3d at 442 ("[E]ven when a youthful offender is sentenced above the cap following a substantive violation of probation, the defendant still maintains his or her 'youthful offender status.' "[2] As we explained in *Blacker,* a defendant's status as a youthful offender affects his or her classification within the prison system and his or her eligibility for certain programs and facilities. *Blacker,* 49 So.3d at 787 n. 2. Furthermore, the Department of Corrections may recommend early termination of a youthful offender's prison sentence. *Id.*

There is an unsettled question in Florida's case law regarding whether minimum ***488** mandatory sentencing provisions apply when a youthful offender's probation or community supervision is revoked for a substantive

violation. Significantly, there is seemingly a conflict within case law of this district on the issue.

In *Blacker,* the defendant's youthful offender supervision was revoked for a substantive violation. *Id.* at 786. The trial court revoked his status as a youthful offender and imposed a twenty-five-year minimum mandatory sentence. *Id.* Blacker sought relief under Florida Rule of Criminal Procedure 3.800(a). *Id.* at 787. On appeal from the denial of his motion, we held that improper revocation of a youthful offender's status constitutes a cognizable claim under rule 3.800(a). *Id.* We reversed the trial court's order and remanded for resentencing as a youthful offender, stating that, "[b]ecause [the defendant] maintains his youthful offender status, the minimum mandatory penalties *do not apply.*" *Id.* at 789 (emphasis added).

Approximately a year later, we issued our opinion in *Goldwire.* Goldwire sought review of his prison sentence imposed after revocation of his youthful offender probation. *Goldwire,* 73 So.3d at 845. Goldwire contended that the trial court erroneously believed it was required to impose a minimum mandatory sentence consistent with the offense for which he had originally been convicted, simply because the violation was substantive. *Id.* at 846. We reversed and held that:

> [I]t is within the trial court's discretion to determine whether a youthful offender should be sentenced as such, or if it should impose a non-youthful offender sentence when a substantive violation occurs. Therefore, the trial court is not required to impose the minimum mandatory sentence, but instead, is able to do so when exercising its discretion, dependent upon the circumstances of the case.

Id. Thus, *Goldwire* explained that, upon a substantive violation, the trial court has discretion to sentence the defendant as a youthful offender (meaning within the cap provisions of section 958.04(2)) or to sentence in accordance with the statutory punishment for the offense regardless of the defendant's youthful offender status (in Goldwire's case, that meant a minimum mandatory sentence).

In other words, the trial court in *Goldwire* was mistaken that it could *only* sentence the defendant to the minimum mandatory sentence for the offense. *See id.* We held that the trial court had the discretion instead to sentence the defendant within the youthful offender cap provisions. *Id.* Our decision in *Goldwire* did not signify that the trial court could choose not to impose a minimum mandatory sentence if it exercised its discretion to sentence the defendant above the youthful offender cap provisions under section 948.06(2), Florida Statutes. We recognize that *Blacker* is not mentioned in the *Goldwire* decision, but that is because *Goldwire* did not address the issue of whether a minimum mandatory sentence is required to be imposed if the court chooses to impose a sentence above the cap provisions. That is the issue we consider in this case.

The year after we issued the opinion in *Goldwire,* the Fifth District issued its opinion in *Christian.* In discussing the confusion which has arisen in the case law as a result of using the term "youthful offender status," the Fifth District, in a footnote, expressed concern and disagreement with *Goldwire. Christian,* 84 So.3d at 444 n. 7. In the Fifth District's view, the statement in *Goldwire,* that imposition of a minimum mandatory sentence is discretionary after revocation of probation or community control supervision, is an incorrect ***489** statement of the law and in conflict with the Florida Supreme Court's decision in *State v. Arnette,* 604 So.2d 482 (Fla.1992). 84 So.3d at 444 n. 7. The Fifth District appears to agree with the statement in *Blacker* that minimum mandatory sentencing provisions do not apply to youthful offenders, even after revocation of probation or community control supervision. *See id.* at 444. However, as explained above, the Fifth District misinterpreted our holding in *Goldwire* and took the single sentence out of context.

The Second District weighed in on the issue in *Yegge v. State,* 186 So.3d 553 (Fla. 2d DCA 2015). Yegge appealed his ten-year minimum mandatory sentence imposed after a substantive violation of probation, contending the sentence was illegal because youthful offenders are not subject to minimum mandatory sentencing, even after revocation of supervision for committing a new crime. *Id.* at 554–55. Similar to the position expressed by the Fifth District in *Christian,* Yegge argued that *Arnette* precludes the imposition of a minimum mandatory sentence after revocation of youthful offender supervision. *Id.* at 556.

The Second District rejected that argument, concluding that *Arnette* was not controlling because it decided the issue of a *sentencing cap,* and did not decide the issue of *minimum mandatory sentencing. See id.* at 556–57.

The Second District interpreted the language of section 958.14, Florida Statutes, incorporating the provisions of section 948.06, Florida Statutes, and concluded:

> In our view, this unqualified statement of the sanctions to which a youthful offender who commits a substantive violation is exposed reflects the legislature's intent that such offenders lose the benefit of the original sentencing limitations of the Youthful Offender Act.

Yegge, 186 So.3d at 555. Thus, in the view of the Second District, when imposing incarceration after revocation of youthful offender supervision, "[a] defendant's maximum sentence for his original offense necessarily includes any enhancements for which he qualifies." *Id.* at 556. However, in such cases, the defendant still enjoys some of the benefits of the Act, and "[i]mposing a mandatory minimum on a youthful offender sentence does not equate with removing a defendant's youthful offender status." *Id.*

The Second District went on to observe the seemingly conflicting position in this district between *Blacker* and *Goldwire. Id.* at 557. The Second District agreed with our decision in *Goldwire* "that the trial court has discretion to impose a non-youthful offender sentence after a substantive violation of probation" and certified conflict with *Blacker. Id.* [3]

[4] We now recede from the language in *Blacker* stating that a minimum mandatory sentence cannot be imposed upon a defendant, initially sentenced as a youthful offender, who later substantively violates probation or community control. We hold, as we did in *Goldwire,* that upon a substantive violation of youthful offender supervision, the trial court has the discretion either to sentence under the cap provisions of section 958.04(2), Florida Statutes (assuming a term for a cap sentence is still available), or to impose any sentence it could have imposed when the defendant was originally sentenced, regardless of the ***490** defendant's youthful offender designation, under section 948.06(2), Florida Statutes. Where the trial court chooses the second option, and the original sentence that could have been imposed was a minimum mandatory sentence, then that sentence must be imposed upon revocation of supervision. [4]

[5] The trial court in this case, like the trial court in *Goldwire,* erroneously believed that it was required to impose at least the ten-year minimum mandatory sentence if it revoked Eustache's probation. Contrary to the State's arguments, there is no indication in the record that the trial judge was aware he had the option to revoke Eustache's probation and avoid the minimum mandatory sentence by imposing a sentence within the youthful offender cap provisions. Defense counsel argued for reinstatement of probation and advised the court: "If you revoke and terminate, obviously, you can't give the bottom of the guidelines [51 months] because the minimum mandatory applies." Eustache claims defense counsel gave him the same advice.

Although defense counsel's advice was incorrect under *Goldwire,* we conclude that Eustache is not entitled to relief in this case because the trial court imposed a sentence of fifteen years, more than the ten-year minimum mandatory. The trial court clearly did not feel constrained by counsel's advice and was not inclined to impose a sentence within the youthful offender cap provisions.

Further, Eustache's minimum mandatory sentence is not illegal. As we held in *Goldwire,* and reaffirm today, once the trial court revoked Eustache's probation for a substantive violation and exercised its discretion to impose a sentence above the youthful offender cap provisions, it was required to impose the applicable ten-year minimum mandatory sentence.

We therefore affirm the trial court's denial of post-conviction relief.

Conclusion

The interpretation of these sentencing statutes as applied to a defendant initially sentenced as a youthful offender has engendered a great deal of confusion in the courts, given the number of opinions on this very subject. To the extent the Fifth District in *Christian* agrees with our statement in *Blacker* that a minimum mandatory sentence cannot be imposed upon a defendant who substantively violates youthful offender supervision, we certify conflict.

We also believe the sentencing issues discussed in this case raise matters of great public importance. Thus, we certify the following question as matter of great public importance:

> WHERE A DEFENDANT IS INITIALLY SENTENCED TO PROBATION OR COMMUNITY CONTROL AS A YOUTHFUL OFFENDER, AND THE TRIAL COURT LATER REVOKES SUPERVISION FOR A SUBSTANTIVE VIOLATION AND IMPOSES A SENTENCE ABOVE THE YOUTHFUL OFFENDER CAP UNDER SECTIONS 958.14 AND 948.06(2), FLORIDA STATUTES, IS THE COURT REQUIRED TO IMPOSE A MINIMUM MANDATORY SENTENCE THAT WOULD HAVE ORIGINALLY APPLIED TO THE OFFENSE?

Affirmed.

***491** CIKLIN, C.J., WARNER, GROSS, TAYLOR, MAY, DAMOORGIAN, GERBER, LEVINE, and KLINGENSMITH, JJ., concur.

CONNER, J., concurs in part and dissents in part with opinion, in which FORST, J., concurs.

CONNER, J., concurring in part and dissenting in part.

I concur with most of the majority opinion, but I dissent from the position that once a trial court decides to impose a sentence above the cap provisions of section 958.04(2), Florida Statutes, it *must* impose all of the enhancements and minimum mandatory sentencing provisions that would have been imposed at the initial sentencing, if the defendant had not been sentenced as a youthful offender. In my view, the Legislature has not made it clear that the position taken by the majority was the intended meaning of the statutes pertaining to sentencing youthful offenders for substantive violations of supervision. Because the meaning of the applicable statutory provisions is ambiguous, in my view, the rule of lenity dictates more flexibility for the trial court in sentencing than allowed by the majority.

I agree with Judge Davis's specially concurring opinion in *Yegge* that "the maximum sentence for the offense" under section 958.14 is not necessarily synonymous with "a defendant's maximum exposure in a criminal case." *Yegge v. State,* 186 So.3d 553, 560–61 (Fla. 2d DCA 2015) (Davis, J., specially concurring). As Judge Davis observed, "[t]he *maximum sentence* for an offense is determined by the legislature via statute. But a defendant's *maximum exposure* is determined by the statutory maximum sentence combined with other specific factors as related to the particular defendant or the specific circumstances of the commission of the offense." *Id.* at 561 (emphases added). Thus, the meaning of "maximum sentence" in the context of sections 958.14 and 948.06 appears to be ambiguous.

The rule of lenity requires that "any ambiguity or situations in which statutory language is susceptible to differing constructions must be resolved in favor of the person charged with an offense." *State v. Byars,* 823 So.2d 740, 742 (Fla.2002); *see also Kasischke v. State,* 991 So.2d 803, 814 (Fla.2008). The Legislature has not clearly required the imposition of a minimum mandatory sentence for a youthful offender who substantively violates probation or community control. If the Legislature had intended the outcome espoused by the majority, it could have easily added language to section 958.14 stating that if a sentence above the cap provisions of section 958.04(2) is imposed, all sentencing enhancements and minimum mandatory provisions apply.

There appears to be a good policy reason for not removing the benefits of the Youthful Offender Act upon imposing incarceration for a substantive violation of supervision, in that it continues the benefits of punishing young offenders differently, when appropriate. Thus, I construe sections 948.06 and 958.14 to grant the trial court the discretion to impose a sentence of incarceration that complies with the Criminal Punishment Code and to impose or withhold any applicable minimum mandatory sentence.[5] In my view, the trial court may exercise its discretion whether to impose minimum mandatory ***492** sentences based on the circumstances of each case in determining the best punishment for each youthful offender.

Hopefully, the Legislature will clear up the ambiguity Florida courts have struggled with for an extended period of time. I concur with the certifications of conflict and the question of great public importance.

FORST, J., concurs.

All Citations

199 So.3d 484, 41 Fla. L. Weekly D2022

Footnotes

1 The second sentence of section 958.14 continues to limit the period of incarceration for a youthful offender who commits a technical or nonsubstantive violation to no more than six years, or the maximum sentence for the offense, whichever is less, with credit for time served while incarcerated. § 958.14, Fla. Stat. (2005).

2 As noted by the Fifth District in *Christian,* the case law has been somewhat confusing regarding youthful offender sentencing, with regard to what has been termed a "youthful offender status." *Christian,* 84 So.3d at 441 ("Although that phrase is not found in the Youthful Offender Act, its use in differing contexts (to mean different things) may have helped create the confusion that we will now attempt to clear up.").

3 The Florida Supreme Court initially accepted jurisdiction. *Yegge v. State,* 173 So.3d 968 (Fla.2015). But the Court subsequently dismissed review, concluding that because *Goldwire* was published after *Blacker* and was consistent with the Second District's opinion in *Yegge,* there was no conflict. *Yegge v. State,* 180 So.3d 128 (Fla.2015). However, we think that *Yegge* also interpreted our statement in *Goldwire* out of context.

4 Our position is consistent with the Second District's *Yegge* opinion. We also agree with the Second District's statement in *Yegge* that the imposition of a minimum mandatory sentence does not remove other benefits of the Youthful Offender Act. *See Yegge,* 186 So.3d at 556 ("Imposing a mandatory minimum on a youthful offender sentence does not equate with removing a defendant's youthful offender status.").

5 I concede that this view raises the question of whether Chapter 958 allows the Department of Corrections to recommend early termination of a youthful offender sentence, and gives the trial court authority to follow such a recommendation, when the trial court has imposed a minimum mandatory sentence. See § 958.04(2)(d), Fla. Stat. (2005).