Case No. SC16-1712

IN THE SUPREME COURT OF THE STATE OF FLORIDA

ROBIN EUSTACHE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

On Petition for Discretionary Review From
The Fourth District Court of Appeal of Florida Case No. 4D15-2596

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

This case is about whether a court is required to impose a minimum mandatory sentence that would have originally applied to the offense when 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 (2005).

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). 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).

The ambiguity of the relevant statutes highlight the confusion over whether a court has the discretion to sentence a youthful offender to more than six

years, along with any and all sentencing enhancements for that offense, or whether such sentencing is prohibited.

In 2006, Petitioner was sentenced as a youth offender, and was released on probation in 2009, after serving three years of his sentence. In 2010, Petitioner violated probation, and although his charges were dropped, the Court sentenced him to 15 years in prison for the original offense. Petitioner moved for relief pursuant to Florida Rule of Criminal Procedure 3.850, asserting grounds for post-conviction relief. He asserted that the imposition of the minimum mandatory sentence was either prohibited under the Fourth District's decision in *Blacker v. State*, 49 So.3d 785 (Fla. 4th DCA 2010), or discretionary under the court's decision in *Goldwire v. State*, 73 So.3d 844 (Fla. 4th DCA 2011). The trial court denied the motion and the Fourth District Court of Appeal of Florida affirmed. Petitioner comes before the Court requesting discretionary review of his sentence.

SUMMARY OF ARGUMENT

Discretionary review should be granted because the Fourth District Court of Appeal's decision here expressly and directly conflicts with its own decisions and with those of other district courts. This Court shall accept jurisdiction to clear the confusion the courts have in resentencing youthful

offenders after a substantive violation. Read together, the two statutes, sections 958.14 and 948.06, Florida Statutes (2005), that govern a youthful offender substantive violation provides the court discretion to sentence a youth offender to more than 6 years. However, it should not be interpreted to mean that any and all sentencing enhancements must apply. Rather, courts should use their own discretion, or otherwise, prohibit such enhancements.

The district courts of appeal have conflicting decisions dealing with this issue. The Fourth District in the case at bar concluded that after a substantive violation, if the court sentences petitioner above the youthful offender 6 year cap, it must include any enhancements the offense carries. In doing so, it conflicts with previous rulings from the district courts and contradicts the legislature's intent that once a defendant is sentenced as a youthful offender, he or she retains that status even after a violation of probation.

Beyond conflicting with other district courts, the Fourth District Court of Appeal's decision to apply a mandatory minimum to a juvenile offense is a matter of great public importance. Even in issuing its decision, the Fourth District Court of Appeal certified conflict and stated that the sentencing issues raise a matter of great public importance.

ARGUMENT

I. The Fourth District's Decision In The Case At Bar Expressly And Directly Conflicts With Its Own Precedent And With The Opinions Of Other Jurisdictions.

There is an unsettled question in Florida's case law regarding whether minimum mandatory sentencing provisions apply when a youthful offender's probation or community supervision is revoked for a substantive violation. There is also a conflict within the case law of the Fourth District Court of Appeal.

In *Blacker v. State*, the defendant's youthful offender supervision was revoked for a substantive violation. 49 So.3d 785, 786 (Fla. 4th DCA 2010). The Fourth District remanded, stating that, "[b]ecause [the defendant] maintains his youthful offender status, the minimum mandatory penalties do not apply." Id. at 789. However, barely a year later, the same court held that, upon a substantive violation, the trial court has discretion to sentence the defendant as a youthful offender or to sentence according to the statutory punishment for that offense. See, Goldwire, 73 So.3d 844, 846 (Fla. 4th DCA 2011).

In 2012, the Fifth District disagreed with the Fourth District's decision in *Goldwire* and aligned itself with the Florida Supreme Court's decision in

State v. Arnette, 604 So.2d 482 (Fla. 1992). Christian v. State, 84 So. 3d 437 (Fla. 5th DCA 2012). This Court in *Arnette* made plain the intent of the legislature in drafting its statutes, and concluded that "[u]nless the legislature clearly states otherwise, youthful offenders maintain youthful offender status when they violate condition of community control." See, Arnette, at 484. Using this interpretation of the relevant statutes, the Fifth District agreed with *Blacker* in holding that minimum mandatory sentencing provisions do not apply to youthful offenders, even after revocation of probation or community control supervision. Christian, at 444.

The Second District, on the other hand, disagrees. The court there articulated that "[i]mposing a mandatory minimum on a youthful offender sentence does not equate with removing a defendant's youthful offender status." Yegge v. State, 186 So.3d 553, 556 (Fla. 2d DCA 2015). Thus, the Second District proclaims that the maximum sentence for an original offense, even when that offender was convicted as a youthful offender, is read to include any necessary enhancements.

Taken together, the Fourth District's opinion in *Blacker*, the Fifth District's opinion in *Christian*, and the Florida Supreme Court's understanding of the legislative intent of its youthful offender statutes in *Arnette* presents a clear conflict with the Fourth District's opinion in

Goldwire and the Second District's opinion in *Yegge*. The interpretation of these sentencing statutes as applied to a defendant initially sentenced as a youthful offender has resulted in a significant amount of confusion in the courts. Such confusion has caused a series of conflicting sentences across the state of Florida.

II. The Conflicting Decisions Of The Fourth District And Other Jurisdictions Has Been Certified As A Matter Of Great Public Importance.

It is of great public importance for this Court to resolve a continuous conflict in resentencing a youthful offender after a substantive violation of probation. The lower court agrees that the sentencing issues discussed in this case raise matters of great public importance, and certified it as such. Eustache v. State, 2016 WL 4540552, 5 (Fla. 4th DCA 2016).

CONCLUSION

There is much confusion in the courts regarding Florida's youthful offender sentencing statutes, sections 958.14 and 948.06(2), Florida Statutes. Furthermore, the District Court of Appeal has certified this question as a matter of great public importance. For the foregoing reasons, Petitioner

respectfully requests the Florida Supreme Court to grant discretionary jurisdiction.

DATE: Okeechobee, Florida
October 3, 2016

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed this 3rd day of October 2016 to the party listed below.

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/S/ Robin Eustache

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the font requirements contained in FLA. R. APP. P. 9.210(a)(2).

/S/ Robin Eustache