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 REPLY BRIEF ON THE MERITS

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

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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*.

The State has agreed that *de novo* review applies here.

B. The Youthful Offender Act.

The legislation at issue – Florida's Youthful Offender Act – contains an express statement of legislative intent. Specifically, the Act exists "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.

Express statements of legislative intent provide significant interpretive guidance and should be read *in pari materia* with the remainder of the relevant statutory provisions. *See, e.g.*, *Dep't of Health & Rehab. Servs. v. Yamuni*, 529 So. 2d 258, 261 (Fla. 1988) (express statement of legislative intent reinforced and guided this Court's interpretation of the scope of the statutory duty imposed upon the Department of Health and Rehabilitative Services to protect abused or

neglected children); *K.J.F. v. State*, 44 So. 3d 1204, 1206 (Fla. 1st DCA 2010) (explaining *in pari materia*) (citing *E.A.R. v. State*, 4 So. 3d 614, 629 (Fla. 2009)).

Consistent with the Act's express statement of legislative intent, this Court has held that it

> has always been clear that the legislature intended [the Youthful Offender Act] to treat youthful offenders differently than adults. Unless the legislature clearly states otherwise, youthful offenders maintain youthful offender status even when they violate a condition of community control.

State v. Arnette, 604 So. 2d 482, 484 (Fla. 1992).[1] This statement of legislative intent was therefore featured prominently in Mr. Eustache's initial brief and guided the statutory construction that he provided.

In contrast, the State's answer brief neglects to mention the clear legislative intent established under section 958.021. Indeed, the State's position that Florida courts may sentence youthful offenders "irrespective of the initial youthful offender designation" contradicts the Act's intent and goals, as well as years of Florida precedent, including *Arnette*. The State's initial interpretive lens is thus defective and distorts its argument – leading to faulty contentions and conclusions.

[1] All emphasis is supplied unless otherwise noted.

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

Sections 958.04, 958.14, and 948.06, Florida Statutes, have been separate statutory provisions at all relevant times. Accordingly, their long-standing separate existence – which predates *Arnette* – does not indicate a clear intent to remove youthful offender status or to subject youthful offenders who substantively violate probation or community control to adult sentence enhancements.

As explained in Mr. Eustache's initial brief – and not persuasively disputed by the State – there have not been any amendments to the Act that affect *Arnette*'s holding that youthful-offender status continues despite a substantive community-control or probation violation:

> 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.
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> … [U]nder *Arnette*, even if a youthful offender violates probation (or community control) with a new offense, and is separately charged and convicted of the new offense, he or she is still entitled to be sentenced as a youthful offender on the original offense. Even though the six-year cap does not apply to a youthful offender sentence imposed following a substantive violation of probation, other important sentencing features of the Youthful Offender Act could affect the sentence. This is especially important for crimes carrying a minimum mandatory prison term for sentences imposed outside of the Youthful Offender Act.

Christian v. State, 84 So. 3d 437, 442 (Fla. 5th DCA 2012), *rev. denied*, 134 So. 3d 446 (Fla. 2014); *see also* (I.B. at 9-23).

As now-Justice Lawson explained for the Fifth District, the 1990 amendment on which the State focuses merely removed section 958.14's blanket six-year cap, which previously applied to all youthful-offender sentences imposed after a violation of community control or probation. While the Legislature added language permitting sentencing above this cap for substantive violations, it otherwise kept the operative language the same, and did not expressly or unambiguously state that the initial youthful-offender designation ceased such that adult sentencing enhancements would apply to youthful offenders. *See Christian*, 84 So. 3d at 442-45; *compare* § 958.14, Fla. Stat. (1989), *with* ch. 90-208, § 19, at 1161, Laws of Fla. *and* § 958.14, Fla. Stat. (2016).

In addition to ignoring the Act's express statement of legislative intent, the State also disregards the point that its contentions conflict with – and would nullify – the Department of Corrections' statutory authority to recommend early release for young men and women serving sentences as youthful offenders. *See* § 958.04(2)(d), Fla. Stat.; *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."). Indeed, the State is silent on this point – as were the decisions in *Yegge v. State*, 186 So. 3d 553 (Fla. 2d DCA 2015), and

Eustache v. State, 199 So. 3d 484 (Fla. 4th DCA 2016).[2] This silence reveals a glaring hole in the State's position, which was adopted by the Second and Fourth Districts.

The State – and the Second and Fourth Districts – cannot, on one hand, maintain that the defendant's youthful-offender status continues but, on the other, interpret the Act to permit adult mandatory minimums, which destroy the early-release opportunities that the Act provides. These positions are incongruous and render meaningless a significant benefit and release mechanism that the Legislature consciously provided youthful offenders to distinguish them from adults. *Cf., 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)).

As the Fifth District has correctly explained:

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[2] While the Fourth District acknowledged that, under the Youthful Offender Act, the Department of Corrections has the authority to recommend early release, the court failed to analyze the effect of mandatory-minimum adult sentencing enhancements upon that authority. *See Eustache*, 199 So. 3d at 487 ("[T]he Department of Corrections may recommend early termination of a youthful offender's prison sentence.") In contrast, the partial dissent of Judges Conner and Forst acknowledged this problem: "[T]his 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." *Eustache*, 199 So. 3d at 491 n.5.

> Once a circuit court has imposed a youthful offender sentence, it must continue that status even upon resentencing after a substantive violation of probation. 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.

Long v. State, 99 So. 3d 997, 997-98 (Fla. 5th DCA 2012) (citing *Christian*, 84 So. 3d at 442-43; *Mosley v. State*, 77 So. 3d 877, 877 (Fla. 2d DCA 2012)) (internal citations omitted). That distinct status includes the potential for early release.

Indeed, this early-release analysis was a key component of Mr. Eustache's initial brief and is not addressed by the State. *See* (I.B. at 12-13, 19, 23-26). The Court should construe the State's silence as a concession of error.

Had the Legislature intended to depart from *Arnette* – and nullify a significant benefit otherwise available under the Act – it would have done so expressly and unambiguously. When the Legislature intends to address minimum-mandatory enhancements it understands how to do so. *See, e.g.*, §§ 27.366, 775.087(2)(c), 775.084(1)(c), 775.084(4)(c), 775.0841, 947.16(2)(g), 947.146(3)(b), Fla. Stat. (all expressly discussing "mandatory minimums"). It has not done so in this context.

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 words that the State wishes the Act contained are not there. Further,

while not determinative regarding the presence *vel non* of ambiguity, several Florida jurists reviewing the Youthful Offender Act have agreed with Mr. Eustache's position that the Act does not unambiguously impose adult sentencing enhancements – such as minimum-mandatory terms – on youthful offenders. *See Christian*, 84 So. 3d at 439-45 (majority decision authored by Lawson, J.); *Eustache*, 199 So. 3d at 491-92 (Conner & Forst, J.J., concurring in part and dissenting in part); *Yegge*, 186 So. 3d at 557-62 (Davis, J., specially concurring).

Under these circumstances, it is a statutory imperative to interpret the Act in the manner most favorable to Mr. Eustache – not the State. *See 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."); (I.B. at 24-26).

Thus, in addition to the plain text not supporting the result urged by the State, additional canons of construction also support Mr. Eustache.

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.

While the State attempts to distinguish two of the cases on which Mr. Eustache relied, it fails to distinguish all of them. Further, it failed to materially distinguish this line of precedent. The rule of law remains that when the trial court

labors under a misapprehension as to the correct law to apply to a discretionary sentencing decision, remand is appropriate even if the court might ultimately choose to impose the same sentence. *See* (I.B. at 26-28).

Moreover, even if the State were correct in its interpretation of the Act – which it is not – it is nevertheless guessing that the trial court would impose the same sentence on remand if it were accurately informed that the imposition of such a mandatory minimum would destroy the Department of Corrections' ability to later recommend a youthful offender's early release.

That type of guessing-game is improper. *See, e.g.*, *Pitts v. State*, 202 So. 3d 882, 884 (Fla. 4th DCA 2016) ("Resentencing is warranted where the defendant received a legal sentence, but the trial court misapprehended its sentencing discretion under the relevant statutes.").

CONCLUSION

For the reasons expressed here and in his initial brief, 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 on July 10, 2017, a true and correct copy of the foregoing was e-filed with the Clerk of Court through the Florida Courts eFiling Portal and was served on counsel of record listed below via transmission of e-filing notices generated by the Florida Courts eFiling Portal and via e-mail to:

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CERTIFICATE OF COMPLIANCE

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

/s/ David L. Luck
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