IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

DAZARIAN C. LEWARS,

Respondent.

Case No. SC17-1002

L.T.: 2D15-3471

ON DISCRETIONARY REVIEW FROM THE
THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT OF FLORIDA

INITIAL BRIEF OF PETITIONER

PAMELA JO BONDI
ATTORNEY GENERAL

JOHN KLAWIKOFSY
CHIEF ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 930997
LISA MARTIN
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 72138
Office of the Attorney General
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa FL 33607-7013
CrimAppTpa@myfloridalegal.com
Lisa.martin@myfloridalegal.com
(813) 287-7900, Fax:(813) 281-5500

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

PAGE#

TABLE OF CONTENTS ii

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF ARGUMENT 4

ARGUMENT 6

ISSUE: WHETHER A DEFENDANT WHO COMPLETES A PRIOR PRISON SENTENCE IN A FACILITY OTHER THAN A DEPARTMENT OF CORRECTIONS OR VENDOR FACILITY MAY BE SENTENCED UNDER THE PRISON RELEASEE REOFFENDER ACT FOR A SUBSEQUENT OFFENSE, PROVIDED THE ENUMERATED REQUIREMENTS ARE MET? 6

CONCLUSION 30

CERTIFICATE OF SERVICE 30

CERTIFICATE OF COMPLIANCE 30

TABLE OF CITATIONS

CASES **PAGE#**

Bautista v. State,
863 So. 2d 1180 (Fla. 2003) 23
Blinn v. Florida Department of Transportation,
781 So. 2d 1103 (Fla. 1st DCA 2001) 9
Borden v. East–European Ins. Co.,
921 So. 2d 587 (Fla. 2006) 22
Brinson v. State,
851 So. 2d 815 (Fla. 2d DCA 2003).....13
Calloway v. State,
914 So. 2d 12 (Fla. 2d DCA 2005).....13
Cassista v. State,
57 So. 3d 265 (Fla. 5th DCA 2011).....15
Childers v. Cape Canaveral Hosp., Inc.,
898 So. 2d 973 (Fla. 5th DCA 2005).....15
City of Hollywood v. Lombardi,
770 So. 2d 1196 (Fla. 2000) 9
Cotto v. State,
139 So. 3d 283 (Fla. 2014) 11
Crews v. Fla. Pub. Emp'rs Council 79 AFSCME,
113 So. 3d 1063, (Fla. 1st DCA 2013) 9
Daniels v. Florida Dept of Health,
898 So. 2d 61 (Fla. 2005) 7
E.A.R. v. State,
4 So. 3d 614 (Fla. 2009) 22
Fitzpatrick v. State,
868 So. 2d 615 (Fla. 2d DCA 2004)..... 13, 14
Fla. Dep't of Children & Family Servs. v. P.E.,
14 So. 3d 228 (Fla. 2009) 19
Fla. Dep't of Envtl. Prot. v. Contract Point Fla. Parks, LLC,
986 So. 2d 1260 (Fla. 2008) 22, 23

Fla. Dep't of State v. Martin,
916 So. 2d 763 (Fla. 2005) 23
Fla. State Racing Comm'n v. McLaughlin,
102 So. 2d 574 (Fla. 1958) 23
Forsythe v. Longboat Key Beach Erosion Control Dist.,
604 So. 2d 452 (Fla. 1992) 19
Garner v. State,
839 So. 2d 924 (Fla. 4th DCA 2003).....18
Grant v State,
770 So. 2d 655 (Fla. 2000) 12, 20, 27, 28
Holly v. Auld,
450 So. 2d 217 (Fla. 1984) 8, 10
Horsley v. State,
160 So. 3d 393 (Fla. 2015) 28
Joshua v. City of Gainesville,
768 So. 2d 432 (Fla. 2000) 8
Kasischke v. State,
991 So. 2d 803 (Fla. 2008) 15
Kelsey v. State,
206 So. 3d 5 (Fla. 2016) 29
Koile v. State,
934 So. 2d 1226 (Fla. 2006) 7
Larimore v. State,
2 So. 3d 101 (Fla. 2008) 9
Lewars v. State,
-- So. 3d --, 42 Fla. L. Weekly D1098 (Fla. 2d DCA May 12, 2017)..... 4, 6, 12
Locke v. Hawkes,
595 So. 2d 32 (Fla. 1992) 10
Louzon v. State,
78 So. 3d 678 (Fla. 5th DCA 2012)..... 2, 14, 15, 20
McDonald v. State,
957 So. 2d 605 (Fla. 2007) 12
McLaughlin v. State,
721 So. 2d 1170 (Fla. 1998) 8

Nettles v. State,
850 So. 2d 487 (Fla. 2003) 20
O'Hara v. State,
964 So. 2d 839 (Fla. 2d DCA 2007) 19, 20
Reeves v. State,
957 So. 2d 625 (Fla. 2007) 24
Rollinson v. State,
743 So. 2d 585 (Fla. 4th DCA 1999) 20
St. Mary's Hosp., Inc. v. Phillipe,
769 So. 2d 961 (Fla. 2000) 9
State v. Anderson,
764 So. 2d 848 (Fla. 3d DCA 2000) 23
State v. Atlantic Coast Line R. Co.,
56 Fla. 617 (Fla. 1908) 10
State v. Brigham,
694 So. 2d 793 (Fla. 2d DCA 1997) 8
State v. Burris,
875 So. 2d 408 (Fla. 2004) 6, 8
State v. Cohen,
696 So.2d 435 (Fla. 4th DCA 1997) 8
State v. Cotton,
769 So. 2d 345 (Fla. 2000) 12, 26, 27, 28
State v. Fuchs,
769 So. 2d 1006 (Fla. 2000) 9
State v. Hackley,
95 So. 3d 92 (Fla. 2012) 19
State v. Ramsey,
475 So. 2d 671 (Fla. 1985) 20
State v. Rife,
789 So. 2d 288 (Fla. 2001) 8
State v. Wright,
180 So. 3d 1043 (Fla. 1st DCA 2015) ..... passim
Taylor v. State,
114 So. 3d 355 (Fla. 4th DCA 2013) ..... passim

Taylor v. State,
-- So. 3d. --, 42 Fla. L. Weekly D2551a (Fla. 2d DCA December 6, 2017)..13, 21
Thompson v. State,
695 So. 2d 691 (Fla. 1997) 19
Warner v. City of Boca Raton,
887 So. 2d 1023 (Fla. 2004) 25
Yisrael v. State,
993 So.2d 952 (Fla. 2008) 18
Zapo v. Gilreath,
779 So. 2d 651 (Fla. 5th DCA 2001).....9

Florida Constitution

Article II, section 3, of the Florida Constitution.....10

Florida Statutes

§ 775.082..... 12, 25
§ 775.082(8)(a) 1.....28
§ 775.082(9)..... 10, 11, 20
§ 775.082(9)(a)1..... passim
§ 775.082(9)(a)(1)..... passim
§ 775.082(9)(a)(2).....14
§ 775.082(9)(a)(1)(q).....21
§ 775.082(9)(d) 1 ..... 11, 19
§ 775.082(9)(d)(1).....19
§ 775.082(11).....12
§ 944.02(6).....17
§ 944.02(8), Fla. Stat.....17
§ 945.04(1), Fla. Stat.....18
§ 945.42(7), Fla. Stat.....18
§ 947.1405, Fla. Stat. 14

PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the prosecution below and Appellee before the Second District Court of Appeal; the brief will refer to Petitioner as such, the prosecution, or the State. This brief will refer to Respondent as such, Defendant, or by proper name, e.g., "Lewars".

STATEMENT OF THE CASE AND FACTS

Lewars was tried and convicted by a jury of burglary of a dwelling and grand theft. (R. 160, 239) A sentencing hearing was held on July 23, 2015. (R. 211) The State presented two witnesses: Amy Conrod and Christian Emory. (R. 212) The State also presented, as exhibits: (1) Defendant's fingerprints, (2) 09-CF-20276 conviction, (3) fingerprint examiner's report, (4) clemency certificate, (5) penitentiary pack, and (6) Lee County booking record. (R. 212; Supp. R. 1-44)

Amy Conrod testified that she was a latent print examiner, employed by the Lee County Sheriff's Office. (R. 215) She testified that she had evaluated and matched Lewars' prints with those from the 09-CF-20276 conviction as the same individual. (R. 218)

Sergeant Christian Emory testified that he had been employed by the Lee County Sheriff's Office for twelve years, and that he was the supervisor of classifications. (R. 221) Concerning 09-CF-20276, Lewars was first booked in on January 7, 2013. (R. 223) He was sentenced to 24 months in the Florida Department

of Corrections on that case, with 766 days of credit for time served. (R. 223-24) Lewars was not physically transferred to the Department of Corrections (DOC) on 09-CF-20276. (R. 224-25) Per procedure, DOC sent a release packet to the Lee County Sheriff's Office, and Lewars signed the prison release form. (R. 224) Lee County physically released Lewars after DOC sent the Sheriff's office a teletype authorizing the legal release. (R. 224)

Lewars was sentenced, as a prison release reoffender, to a fifteen-year mandatory minimum term for the burglary of a dwelling and a three-year concurrent term for the grand theft. (R. 239-47) The judgment and sentence was rendered on April 24, 2015. (R. 239-47) The notice of appeal was filed on April 3, 2015.

Lewars appealed his judgment and sentence to the Second District Court of Appeal. On May 12, 2017, the Second District Court of Appeal filed its opinion in the instant case. The court affirmed the judgment but vacated Lewars' sentence. In its opinion, the Second District Court of Appeal held that Respondent's sentence, for burglary of a dwelling, as a Prison Release Reoffender (PRR), must be reversed because Respondent was not present in a Florida Department of Corrections (DOC), or vendor, facility at the time of his release from his prison sentence. In its opinion, the Second District Court of Appeal certified conflict with *Louzon v. State*, 78 So. 3d 678 (Fla. 5th DCA 2012), *Taylor v. State*, 114 So. 3d 355, 355 (Fla. 4th DCA 2013), and *State v. Wright*, 180 So. 3d 1043, 1045-46 (Fla. 1st DCA 2015) on the

issue of whether the legislature intended to include under the purview of § 775.082(9)(a)1, Florida Statutes, those persons who physically complete their prison sentence in a facility not operated by DOC or one of its vendors.

The State sought discretionary review in this Court based on express and direct conflict with decisions in the First, Fourth and Fifth District Courts of Appeal. Petitioner filed its Motion to Stay the Mandate and its Notice to Invoke the Discretionary Jurisdiction of the Florida Supreme Court with the Second District Court of Appeal on May 26, 2017. *Lewars v. State*, 2D15-3471. The Second District Court of Appeal denied the motion to stay on June 20, 2017. *Lewars v. State*, 2D15-3471. The State filed a motion to stay with this Court and this Court granted the stay on July 5, 2017. *State v. Lewars*, SC17-1002. Following jurisdictional briefing, on September 13, 2107, this Court accepted jurisdiction to resolve the conflict between the Second District Court of Appeal and the First, Fourth and Fifth District Courts of Appeal. *State v. Lewars*, SC17-1002.

SUMMARY OF ARGUMENT

The Second District Court of Appeal, in *Lewars v. State*, -- So. 3d --, 42 Fla. L. Weekly D1098 (Fla. 2d DCA May 12, 2017), held that a defendant is required to be physically present in a Florida Department of Corrections (D.O.C.), or vendor, facility at the time of his release from his prison sentence in order to qualify for the Prison Releasee Reoffender (P.R.R.) sentencing enhancement, pursuant to § 775.082(9)(a)1, Florida Statutes. To date, no other district court of appeal in the state agrees with the *Lewars* court's interpretation of the PRR statute, or the result reached by the *Lewars* court. In fact, Judge Anthony K. Black, also of the Second District Court of Appeal, wrote a concurring opinion, in *Taylor v. State*, -- So. 3d. --, 42 Fla. L. Weekly D2551a (Fla. 2d DCA December 6, 2017), expressing his concern with the *Lewars* court's analysis of this issue. Moreover, there is express and direct conflict between the Second District Court of Appeal and First, Fourth and Fifth District Courts of Appeal regarding whether the P.R.R. Act applies to defendants who were legally released from D.O.C. but physically released from a facility other than a D.O.C. or vendor facility.

The *Lewars* holding is legally unsupportable and defies clearly expressed legislative intent and public policy regarding sentencing to the fullest extent of the law. The *Lewars* court failed to consider the practical ramifications of its decision which abrogated Legislature's power to determine who qualifies for the P.R.R.

sentencing enhancement, as codified in the Florida Statutes. The *Lewars* court exceeded its appropriate judicial function and disregarded the rules of statutory interpretation to create a new class of people exempt from the P.R.R. Act by narrowing the reach of the statute. Since Dazarian Lewars committed an enumerated offense under the PRR statute less than three years after being released from a prison sentence, the trial court correctly sentenced him as a prison release reoffender, and the Second District Court of Appeal erred in reversing his sentence.

ARGUMENT

ISSUE: A DEFENDANT WHO COMPLETES A PRIOR PRISON SENTENCE IN A FACILITY OTHER THAN A DEPARTMENT OF CORRECTIONS OR VENDOR FACILITY MAY BE SENTENCED UNDER THE PRISON RELEASEE REOFFENDER ACT FOR A SUBSEQUENT OFFENSE, PROVIDED THE ENUMERATED REQUIREMENTS ARE MET.

The Second District Court of Appeal erred in its reversal of Dazarian Lewars's sentence in *Lewars v. State*, -- So. 3d --, 42 Fla. L. Weekly D1098 (Fla. 2d DCA May 12, 2017). The *Lewars* court's analysis of the plain language of the statute was flawed, and it failed to interpret § 775.082(9)(a)1, Florida Statutes, in pari materia with the entirety of the Prison Releasee Reoffender (P.R.R.) Act. The court's interpretation of § 775.082(9)(a)1 was contrary to legislative intent and, if allowed to stand, would lead to absurd results. This issue involves a question of statutory interpretation, which is reviewed de novo. *State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004).

On April 1, 2013, Dazarian Lewars was sentenced to a two-year prison sentence in Lee County case number 09-CF-20276. The Florida Department of Corrections (D.O.C.) released Respondent from its custody on April 2, 2013, after serving the two-year prison sentence in 09-CF-20276, with credit for time served. On May 30, 2013, Respondent committed the offenses which were the basis of the appeal below. Since less than two months had passed between Respondent's release from his prison sentence and committing an enumerated offense under

§775.082(9)(a)1, Florida Statutes, the trial court properly sentenced Respondent to a fifteen-year sentence, pursuant to the P.R.R. statute.

However, on appeal, the *Lewars* court held that the trial court committed reversible error because the plain language of the P.R.R. statute requires that in order to be a qualifying prior prison sentence, a defendant must physically be present in a state correctional facility operated by the Department of Corrections (D.O.C.) or a private vendor when D.O.C. releases him from his prison sentence. Since Respondent was physically released from the county jail, which is operated by the Lee County Sheriff's Office, the *Lewars* court found that Respondent did not qualify to be sentenced under the P.R.R. Act. The Second District Court of Appeal proclaimed, "We decline to adopt the reasoning of *Wright*, *Taylor*, and *Louzon* because, in concluding that the legislature intended to sentence those in Lewars's position as a PRR, they seem to have skipped the 'plain language' step of the statutory-construction analysis." *Id*. at *4 (internal citation omitted). The court further held that the "absurdity doctrine" would not support the decision reached by the First, Fourth, and Fifth District Courts of Appeal. *Id*. at. *5.

Statutory Interpretation

The first step in determining a statute's meaning is to look to its plain language. *Koile v. State*, 934 So. 2d 1226, 1230-31 (Fla. 2006), *citing Daniels v. Florida Dept of Health*, 898 So. 2d 61, 64–65 (Fla. 2005). The courts must give a

statute its plain and obvious meaning. *McLaughlin v. State*, 721 So. 2d 1170, 1172 (Fla. 1998). "[T]he statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent" *See State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004). Legislative intent is the "polestar" of statutory interpretation. *State v. Rife*, 789 So. 2d 288, 292 (Fla. 2001). If the statutory language is ambiguous, a court may turn to the rules of statutory construction as a means to ascertain the legislature's intent. *Joshua v. City of Gainesville*, 768 So. 2d 432 (Fla. 2000). Thus, when faced with clear and unambiguous statutory language, the court need not resort to the rules of statutory construction. *Id*.

Nevertheless, "[w]hen faced with an unambiguous statute, the courts of this state are 'without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.' " *State v. Cohen*, 696 So.2d 435, 436 (Fla. 4th DCA 1997), quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984). "This principle is 'not a rule of grammar; it reflects the constitutional obligation of the judiciary to respect the separate powers of the legislature' ". *Rife*, 789 So. 2d at 292, *citing State v. Brigham*, 694 So. 2d 793, 797 (Fla. 2d DCA 1997). Importantly, "[w]here the literal language of the statute is in conflict with the stated legislative policy of the act, the court will not give the language its literal

interpretation ‘when to do so would lead to an unreasonable conclusion or defeat legislative intent or result in a manifest incongruity.’ ” *Blinn v. Florida Department of Transportation*, 781 So. 2d 1103, 1107 (Fla. 1st DCA 2001) (citations omitted).

A statute “must be construed in its entirety and as a whole.” *St. Mary's Hosp., Inc. v. Phillipe*, 769 So. 2d 961, 967 (Fla. 2000). Under the doctrine of “in pari materia,” a court must “construe related statutes together so that they illuminate each other and are harmonized.” *Zapo v. Gilreath*, 779 So. 2d 651 (Fla. 5th DCA 2001); *State v. Fuchs*, 769 So. 2d 1006 (Fla. 2000). Statutes must be construed to make internal sense, as well as to be consistent with the surrounding statutory scheme. *Larimore v. State*, 2 So. 3d 101, 106 (Fla. 2008) ("Related statutory provisions must be read together to achieve a consistent whole, and ... "[w]here possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.'" “In an effort to ascertain and give effect to the intention of the Legislature as expressed in the statute, courts should give words in a statute their ordinary and every day meaning unless the context reveals that a technical meaning applies.” *Crews v. Fla. Pub. Emp'rs Council 79 AFSCME,* 113 So. 3d 1063, 1069 (Fla. 1st DCA 2013) (internal quotation and citation omitted).

Legislators are presumed to be aware of the state of the law and judicial construction of its laws. *City of Hollywood v. Lombardi*, 770 So. 2d 1196 (Fla. 2000).

Separation of Powers

"The drafters of our constitution emphasized the importance of the separation of powers doctrine by expressly stating that principle in our constitution. Article II, section 3, of the Florida Constitution provides: 'The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.' " *Locke v. Hawkes*, 595 So. 2d 32, 36 (Fla. 1992). "The Legislature may not delegate the power to enact a law, or declare what the law shall be, or to exercise an unrestricted discretion in applying a law". *State v. Atlantic Coast Line R. Co*., 56 Fla. 617 (Fla. 1908). Further, "[t]he Legislature may not delegate the power to make a law prescribing a penalty". *Id*. The "courts of this state are without power to construe an unambiguous statute in a way which would extend, modify, or *limit*, its express terms or its *reasonable and obvious implications*. To do so would be an abrogation of legislative power". *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) (citations omitted).

Section 775.082(9), Florida Statutes, creates a sentence enhancement for a defendant who is considered a prison releasee reoffender, which is defined as any defendant who commits, or attempts to commit:

a. Treason;
b. Murder;
c. Manslaughter;
d. Sexual battery;

> e. Carjacking;
> f. Home-invasion robbery;
> g. Robbery;
> h. Arson;
> i. Kidnapping;
> j. Aggravated assault with a deadly weapon;
> k. Aggravated battery;
> l. Aggravated stalking;
> m. Aircraft piracy;
> n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
> o. Any felony that involves the use or threat of physical force or violence against an individual;
> p. Armed burglary;
> q. Burglary of a dwelling or burglary of an occupied structure; or
> r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, s. 827.071, or s. 847.0135(5);
>
> within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor or within 3 years after being released from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

§ 775.082(9)(a)1., Florida Statutes.

In enacting section 775.082(9), "[t]he PRR statute specifically states that the legislative intent is to punish those eligible for PRR sentencing to *the fullest extent of the law*. *See* § 775.082(9)(d) 1., Fla. Stat. (2002)". *Cotto v. State*, 139 So. 3d 283, 289 (Fla. 2014). "The Legislature indicated that the Act was enacted both

because 'the people of this state and the millions of people who visit our state deserve public safety and protection from violent felony offenders who have previously been sentenced to prison and who continue to prey on society by reoffending,' and because 'the Legislature finds that the best deterrent to prevent prison releasees from committing future crimes is to require that any releasee who commits new serious felonies must be sentenced to the maximum term of incarceration allowed by law, and must serve 100 percent of the court-imposed sentence.' Chapter 97–239, Laws of Florida". *Grant v. State*, 770 So. 2d 655, 662 (Fla. 2000); *see also McDonald v. State*, 957 So. 2d 605, 610 (Fla. 2007); *State v. Cotton*, 769 So. 2d 345, 355 (Fla. 2000).

Here, the Second District Court of Appeal, specifically enunciating § 775.082(9)(a)1 to be unambiguous, determined that Dazarian Lewars was improperly sentenced as a P.R.R. because he was released from his prison sentence while in physical custody of the county jail. *Lewars*, 42 Fla. L. Weekly D1098 *4. The Second District Court of Appeal's determination that those prisoners who serve the last day of their prison sentence in a facility that is not operated by D.O.C. or one of its vendors do not qualify for the sentencing enhancement pursuant to the P.R.R. Act is an abrogation of the Florida Legislature's lawmaking power. The *Lewars* court created a new class of people exempt from § 775.082(9)(a)(1), in violation of the express purpose of Legislature's enactment of § 775.082, which is to create

uniform punishment for the offenders who fall under the parameters of the section. § 775.082(11), Florida Statutes. By the stated intent and purpose of the PRR Act, it is evident that Legislature did not intend to exempt defendants who were physically released from a prison sentence at a facility that was not operated by D.O.C. or one of its private vendor. Since the *Lewars* court limited the express terms of the P.R.R. statute and/or its reasonable and obvious implications, the court abrogated Legislature's lawmaking power in its decision to create an exemption to the PRR statute.

DOC had legal custody of Lewars

The *Lewars* court failed to appreciate that legal and physical custody coexist, even though prior Second District Court of Appeal opinions have recognized this distinction. *See Taylor v. State*, -- So. 3d. --, 42 Fla. L. Weekly D2551a n 6 (Fla. 2d DCA December 6, 2017):

> Moreover, a defendant must have been "released from a state correctional facility." § 775.082(9)(a)(1) (emphasis added). This court has held that, in this context, "release" "means actual release from a state prison sentence" and not the defendant's "physical[ ] release[ ] from a state correctional facility" or his "release from a temporary confinement that happens to be in state prison." *Brinson v. State*, 851 So. 2d 815, 816 (Fla. 2d DCA 2003) (emphasis added); *see also Calloway v. State*, 914 So. 2d 12, 14 (Fla. 2d DCA 2005) (affirming sentence as PRR and recognizing "that the fact of Calloway's date of release from his prior prison sentence is not the same as a bare fact of a prior conviction" (emphasis added)); *Fitzpatrick v. State*, 868 So. 2d 615, 616 (Fla. 2d DCA 2004) (stating

> that for PRR purposes, "it is the fact of defendant's release from custody, not his status of being in custody, that is relevant" (second emphasis added)). *Brinson* represents the inverse of Taylor's case in that Brinson committed the offense for which he was designated a PRR after being physically released from a DOC building following a temporary confinement based on an alleged conditional release violation. Id.; see also § 947.1405, Fla. Stat. (1994). However, I note that the Act was amended in 1999 to include "any defendant who commits or attempts to commit any" qualifying offense "while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor." Ch. 99–188, § 2, Laws of Fla.; see also § 775.082(9)(a)(2).

In *Louzon v. State,* 78 So. 3d 678 (Fla. 5th DCA 2012), the trial judge imposed a prison sentence pursuant to the P.R.R. statute. As with Petitioner, Louzon was sentenced to prison, but he was not physically transferred to the Department of Corrections since he had 609 days of credit for jail time served and, thus, his sentence was found to have been fully served. "When Louzon was sentenced to imprisonment in May 2009, he was placed in the legal custody of the Department of Corrections. Because of the jail time credit, he was released by the Department of Corrections from its legal custody." *Id*. at 680.

On appeal, the Fifth District Court of Appeal rejected Louzon's argument that in order to qualify for P.R.R. sentencing under § 775.082(9)(a), he must have been physically present at, and then released from, a DOC facility. The court explained,

> To accept Louzon's argument would place form over substance and would be inconsistent with the Legislature's clear intent to provide for a greater sentence for individuals who commit a qualifying offense within three years of completion of a previously imposed prison sentence. To accept Louzon's argument would also mean that in order for the State to ensure that a defendant in Louzon's situation was eligible for subsequent PRR sentencing, it would have to physically transfer an individual from jail to a Department of Corrections facility—where the individual would then be entitled to an immediate release. Courts should not construe a statute so as to achieve an absurd result. *See Kasischke v. State*, 991 So. 2d 803, 813 (Fla. 2008); *Childers v. Cape Canaveral Hosp., Inc.*, 898 So. 2d 973, 975 (Fla. 5th DCA 2005).

The court cited to an earlier opinion, *Cassista v. State*, 57 So. 3d 265, 267 n. 1 (Fla. 5th DCA 2011), which reasoned that "If [an] offender's state prison sentence expires while he or she is temporarily residing in a hospital or county jail, we would have no difficulty in concluding that the offender was constructively in a state prison facility when his sentence expired for PRR purposes." *Louzon*, 78 So. 3d at 680-81.

The Fourth District Court of Appeal, in *Taylor v. State*, 114 So. 3d 355 (Fla. 4th DCA 2013), agreed with the Fifth District Court of Appeal and held that the PRR statute applied to those defendants whose qualifying prison sentence expires while being housed in the county jail. ("As to appellant's PRR sentence, we affirm based upon *Louzon v. State*, 78 So.3d 678 (Fla. 5th DCA 2012), the reasoning of which we adopt").

The First District Court of Appeal, in *State v. Wright*, 180 So. 3d 1043 (Fla. 1st DCA 2015), agreed with the Fifth and Fourth District Courts of Appeal that "Appellant's release from custody constituted a constructive release from the Department of Corrections and a state correctional facility for purposes of section 775.082(9)(a) 1." *Id.* at 1045. The court noted that it saw "nothing in the PRR statute to indicate that the Legislature intended for a defendant in this situation to avoid PRR status in the future." *Id*. at 1046. The court specifically declined to hold "that Appellant, who committed a PRR-qualifying offense, who was committed to the Department's custody, and whose release facility was listed as the central office, could not be considered a PRR simply by virtue of the fact that he was sentenced to time served and physically walked out of a county jail." *Id*. at 1045-46.

Here, the *Lewars* court's analysis is flawed because the plain language of the statute is satisfied by the Florida Department of Corrections' (D.O.C.'s) legal release from custody that was required to be given prior to Lewar's physical release from the county jail. Lewars was not physically transferred to D.O.C. on his prior prison sentence; however, per procedure, D.O.C.'s central office sent a release packet to the Lee County Sheriff's Office, and Lewars signed the prison release form. (R. 224-25; Supp. R. 28-29) Lee County was legally unable to physically release Lewars until D.O.C. sent the sheriff's office a teletype authorizing the legal release. (R. 224)

Therefore, Lewars was, in fact, "released from a state correctional facility operated by the Department of Corrections", in accordance with § 775.082(9)(a)(1).

Additionally, the State adopts Judge Anthony K. Black's analysis of this issue:

> The Act requires that a defendant previously have been "released from a state correctional facility operated by the [DOC]." § 775.082(9)(a)(1). Thus, the phrase "state correctional facility" is of primary importance to the question presented by this case and by *Lewars*. And although ***Lewars*** focuses on the definition of "facility," the statute is specific to a "state correctional facility," making the entire phrase the plain language which we must apply. "State correctional facility" is a term of art not defined within the Act; however, the definitions section of the State Correctional System chapter defines "state correctional institution" as "any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the [DOC]." § 944.02(8), Fla. Stat. (2016) (emphasis added). "State prison" is defined by section 944.08(1) "as a place of confinement or punishment for a crime" to "be construed to mean and refer to the custody of the Department of Corrections within the state correctional system." (Emphasis added.) A state correctional facility, as used in the Act, would then be a state correctional institution under the applicable definition; the words are interchangeable for definitional purposes here. See also§ 775.082(9)(a)(2) (including releasees from "correctional institution[s] of ... the United States" and further establishing that facility and institution are interchangeable for definitional purposes); § 944.09(1)(e) ("The [DOC] has authority to adopt rules ... relating to ... the operation and management of the correctional institution or facility and its personnel and functions." (emphasis added)). Thus, in pertinent part, a "state correctional facility operated by the [DOC]" means

a prison or "other correctional facility" in which "prisoners are housed ... under the custody and jurisdiction of the department." See §§ 775.082(9)(a)(1), 944.02(8).

In turn, "prisoner" is defined to include "any person committed to or detained in any municipal or county jail or state prison, prison farm, or penitentiary, or to the custody of the [DOC] pursuant to lawful authority." § 944.02(6) (emphasis added); *see also* § 944.17(1) ("Each prisoner sentenced to the state penitentiary shall be committed by the court to the custody of the [DOC]."); § 945.42(7), Fla. Stat. (2016) (" 'Inmate' means any person committed to the custody of the [DOC]"). Thus, it is a person's status of being under the jurisdiction and custody of the DOC that defines prisoner. "State correctional facility" must then include both prison buildings as well as other correctional facilities housing prisoners under the custody and control of the DOC. *Cf. Garner v. State*, 839 So. 2d 924, 925–26 (Fla. 4th DCA 2003) (concluding that legislative intent and statutory terms did not equate Jimmy Ryce facilities with correctional facilities for purposes of PRR designation).[4]These provisions make clear that a defendant who has been committed to the custody of the DOC is a prisoner such that the building in which he is housed—temporarily or permanently—is a state correctional facility.

To the extent that the meaning of section 775.082(9)(a)(1) turns on the phrase "operated by" rather than "state correctional facility," section 944.171(1) provides that the DOC "may contract with county or municipal facilities for the purposes of housing inmates committed to the [DOC]," and that an inmate in another facility "remains under the jurisdiction of the [DOC]." § 944.171(1), (1)(b).[5] Section 945.025, Jurisdiction of Department, provides that the DOC's operational jurisdiction extends to "other correctional facilities, including detention facilities of varying levels of security, work-release facilities, and community correctional facilities, halfway houses, and other approved community

residential and nonresidential facilities and programs." § 945.025(3). Further, "[t]he DOC is 'responsible for the inmates and for the operation of, and shall have supervisory and protective care, custody, and control of, all buildings, grounds, property of, and matters connected with, the correctional system.' " *Yisrael v. State*, 993 So.2d 952, 959 (Fla. 2008) (quoting § 945.04(1), Fla. Stat. (2001)). These statutory provisions further suggest that a county jail qualifies as a state correctional institution operated by the DOC once a defendant has been convicted and sentenced such that he is in the custody and under the jurisdiction of the DOC.

By their plain language, these statutes lead to a conclusion that it is a defendant's status as having been committed to the custody of the DOC to serve a prison term, serving that term, and being released from DOC custody within three years of committing the qualifying offense that classifies a defendant as a PRR. *Cf. State v. Hackley*, 95 So. 3d 92, 94 (Fla. 2012) ("The plain language of the burglary, assault, and PRR statutes leads us to conclude that burglary of a conveyance with an assault is a qualifying PRR offense.").

"[I]t is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole." *Fla. Dep't of Children & Family Servs. v. P.E.*, 14 So. 3d 228, 234 (Fla. 2009) (alteration in original) (*quoting Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992)); *see also Thompson v. State*, 695 So. 2d 691, 692 (Fla. 1997) ("[P]hrases within a statute are not to be read in isolation, but rather should be construed within the context of the entire section."). That is, "[statutory language] must be taken in context, so that its meaning may be illuminated in the light of the statutory scheme of which it is a part." *O'Hara v. State*, 964 So. 2d 839, 843 (Fla. 2d DCA 2007). In that regard, section 775.082(9)(d) provides: "It is the intent of the [l]egislature that offenders previously released from prisonwho meet the criteria in paragraph (a) be punished to the fullest

extent of the law and as provided in this subsection ....” § 775.082(9)(d)(1)(emphasis added).

In chapter 97–239, Laws of Florida, which created the Act, the legislature expressly defined the Act as providing for enhanced sentencing “under specified circumstances when the reoffender has been released from correctional custody.” Ch. 97–239, at 4397, Laws of Fla. (emphasis added). The legislature also stated that Florida residents and visitors deserve protection “from violent felony offenders who have previously been sentenced to prison and who continue to prey on society by reoffending.” *Id.* (emphasis added).

The Florida Supreme Court has repeatedly recognized that the Act is “rationally related to the legitimate state interests of punishing recidivists more severely than first time offenders and protecting the public from repeat criminal offenders.” *Grant v. State*, 770 So.2d 655, 661 (Fla. 2000) (*quoting Rollinson v. State*, 743 So. 2d 585, 589 (Fla. 4th DCA 1999)); *see also Nettles v. State*, 850 So. 2d 487, 493 (Fla. 2003). In that respect, “[t]he Act increases the penalty for a crime committed after its enactment, based upon release from a term of imprisonment resulting from a conviction which occurred prior to the Act.” *Grant*, 770 So.2d at 661.

In addition to creating the Act, chapter 97–239 amended section 944.705 to provide that the DOC must “notify every inmate ... in the inmate's release documents, that the inmate may be sentenced pursuant to [the Act] if the inmate commits any felony offense described in [the Act] within 3 years after the inmate's release.” This provision further supports that section 775.082(9) applies to an otherwise qualifying prisoner released from DOC's custody. *Cf. State v. Ramsey*, 475 So. 2d 671, 673 (Fla. 1985) (stating that the statutory phrase “ ‘transported to or from a place of confinement’ should not be so narrowly construed as to vitiate the intent of the statute”).

> The First, Fourth, and Fifth Districts have all held that to accept Taylor's argument "would be inconsistent with the [l]egislature's clear intent to provide for a greater sentence for individuals who commit a qualifying offense within three years of completion of a previously imposed prison sentence." *Wright*, 180 So.3d at 1045; *Louzon*, 78 So.3d at 681; accord *Taylor*, 114 So.3d at 356. Although the First, Fourth, and Fifth Districts did not discuss defined statutory terms in their analyses, their holdings are consistent with the above plain language analysis. Nothing in the statutory text or context indicates that only those recidivists who were previously given a prison sentence, served at least some part of that sentence in a DOC building, and were then physically released from that building must be punished more severely. Applying the statute in such a way improperly excludes those defendants who, like Taylor, were awarded jail credit amounting to time-served on a prison sentence; those who were transferred to a facility awaiting postconviction hearings; those who were temporarily detained in a prison;[6] or those who were transferred to another facility for medical care or to county jail to face unrelated charges.[7] Such an interpretation is at odds with the express statutory language requiring more severe punishment for reoffenders who were released from correctional custody within three years of commission of their latest offenses.

Taylor v. State, -- So. 3d. --, 42 Fla. L. Weekly D2551a (Fla. 2d DCA December 6, 2017) (footnotes omitted).

Plain Meaning of an Unambiguous Statute

The Second District Court of Appeal in *Lewars* specifically declined to adopt the reasoning of *Wright*, *Taylor*, and *Louzon*, proclaiming that those courts skipped the "plain language" step of the statutory-construction analysis. *Id*. at *4 However,

it was the *Lewars* court which failed to conduct a correct analysis of the plain meaning of the statute.

The *Lewars* court essentially decided that most literal interpretation of the statute was the correct interpretation. The *Lewars* court reasoned,

> The pertinent language of section 775.082(9)(a)(1)(q) defines a PRR as "any defendant who commits, or attempts to commit ... burglary of a dwelling ... within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor ...." (Emphasis added.) In requiring release from a DOC "facility"—rather than, for example, from DOC "custody" or simply "by DOC"—PRR status plainly contemplates release from a physical plant operated by the DOC (or a private vendor).[2] There is no dispute that, less than two months before committing the qualifying PRR offense of burglary of a dwelling, Lewars was released from a county jail having never spent a moment in a DOC facility. Consequently, under the unambiguous language of the statute, he does not qualify as a PRR.

Id. at *4. However, the court's simplistic approach renders the statutory interpretation analysis incomplete. Even with an unambiguous statute, the plain language of the statute is to be construed in pari materia with the other subsections of the statute. *E.A.R. v. State*, 4 So. 3d 614, 629 (Fla. 2009):

> We review questions involving statutory interpretation *de novo. See, e.g., Fla. Dep't of Envtl. Prot. v. Contract Point Fla. Parks, LLC*, 986 So. 2d 1260, 1264 (Fla. 2008). The intent of the Legislature is the polestar of statutory construction. *See, e.g., Borden v. East–European Ins.*

> *Co.*, 921 So. 2d 587, 595 (Fla. 2006). To discern this intent, the Court looks "primarily" to the plain text of the relevant statute, and when the text is unambiguous, our inquiry is at an end. *Id.* However,
>
> > if a part of a statute appears to have a clear meaning if considered alone but when given that meaning is inconsistent with other parts of the same statute or others *in pari materia*, the Court will examine the entire act and those *in pari materia* in order to ascertain the overall legislative intent.
>
> *ContractPoint*, 986 So.2d at 1265–66 (brackets omitted) (quoting *Fla. State Racing Comm'n v. McLaughlin*, 102 So. 2d 574, 575–76 (Fla. 1958)). "The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." *Fla. Dep't of State v. Martin*, 916 So. 2d 763, 768 (Fla. 2005). As part of this inquiry, we must address the legislation "as a whole, including the evil to be corrected, the language, title, and history of its enactment, and the state of law already in existence." *Bautista v. State*, 863 So. 2d 1180, 1185 (Fla. 2003)(quoting *State v. Anderson*, 764 So. 2d 848, 849 (Fla. 3d DCA 2000)). Here, the Florida Legislature has provided a comprehensive statutory scheme, and we attempt to follow the requirements that it has set forth.

The *Lewars* court was required to read § 775.082(9)(a)(1) in pari materia with the entirety of § 775.082, including Legislature's intent in enacting the P.R.R. Act, "[i]t is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law" [§ 775.082(9)(d)1]; the purpose of the statute, "[t]he purpose of this section is to

provide uniform punishment for those crimes made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference." [§ 775.082(11)]; and, the additional class of offenders Legislature intended to include in the PRR Act:

> "Prison releasee reoffender" also means any defendant who commits or attempts to commit any offense listed in sub-subparagraphs (a)1.a.-r. while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, <u>following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.</u>

§ 775.082(9)(a)(2) (emphasis supplied).

"[S]tatutory enactments are to be interpreted so as to accomplish rather than defeat their purpose." *Reeves v. State*, 957 So. 2d 625, 629 (Fla. 2007). The *Lewars* court failed to interpret § 775.082(9)(a)(1) to accomplish the purpose of the P.R.R. Act, which is "to provide uniform punishment for those crimes made punishable under this section". § 775.082(11). The Legislature makes it evident that the focus is on punishing the crimes being sentenced under the act and not on the prior prison sentence. Had the *Lewars* court conducted a proper analysis, considering the P.R.R. Act as a whole, the result would have been aligned with decisions of the First,

Fourth, and Fifth District Courts of Appeal. When reading the entirety of § 775.082, specifically sections pertaining to the P.R.R. Act, it is evident that the "prison sentence" that Legislature intended to include was one that was "punishable by more than 1 year in this state", and not one that was dependent on whether the last day of the sentence was spent in a D.O.C. or vendor facility. *See* § 775.082(9)(a)(2). However, even with the benefit of having a full analysis by which three district courts of appeal had already considered and rejected the same argument made by Lewars, the *Lewars* court decided to limit the statute's reach rather than accomplish its purpose. This is impermissible.

Absurd Results and Equal Protection Implications

The State asserts that the Second District Court of Appeal's analysis deconstructs the societal protections the Legislature seeks to erect. Without question, the Legislature did not mean to exempt from the P.R.R. Act prisoners who served the last days, or minutes, of their prison sentence in a facility other than one operated by DOC or one of its vendors. Logically, the Legislature cannot have intended to create so narrow an exemption. Such an interpretation would nullify the Legislature's intention in enacting the statute and render its provisions meaningless. This Court has affirmed that a statute should not be read in a manner which renders it meaningless or creates an absurd result. *Warner v. City of Boca Raton*, 887 So. 2d 1023 (Fla. 2004).

If allowed to stand, the Second District Court of Appeal's interpretation of § 775.082(9)(a)1 would lead to absurd results, contrary to the statute's purpose to provide uniform punishment for those crimes made punishable under this section, and the intent to punish such defendants to the full extent of the law. § 775.082, Florida Statutes. The P.R.R. Act was enacted with the purpose to keep violent felony offenders incarcerated as long as possible.

In deciding that their interpretation of § 775.082(9)(a)1 did not lead to absurd results, the *Lewars* court was persuaded by Judge Makar's dissent in *Wright:*

> A reasonable person could take the view that offenders released from DOC-operated state prisons are, on average, guilty of more serious crimes such that offenders released from a county facility would not trigger PRR sentencing; or perhaps the Legislature erred on the side of caution, limiting PRR status to releases from state prisons to avoid potential misclassifications of prisoners released from county facilities.

Wright v. State, 180 So. 3d at 1048. However, Legislature's intent in creating the P.R.R. Act is diametrically opposed to this argument. It is of no import the length or severity of the prior prison sentence: this is apparent because the statute does not list prerequisite offenses for the prior prison sentence. The focus is not on the prerequisite sentence, but rather, the current, violent offense. Legislature enacted the P.R.R. statute to both deter offenders from escalating criminal behavior and to punish violent criminals. *State v. Cotton*, 769 So. 2d 345, 355 (Fla. 2000):

> In passing the Act, the Legislature found that (1) recent court decisions have mandated the early release of violent felony offenders; (2) *the people of the State and its visitors deserve public safety and protection from violent felony offenders* who have previously been sentenced to prison and who continue to prey on society by reoffending; and (3) "the best deterrent to prevent prison releasees from committing future crimes is to require that any releasee who commits new serious felonies must be sentenced to the maximum term of incarceration allowed by law, and must serve 100 percent of the court-imposed sentence."

Additionally, equal protection implications will arise for defendants who were physically present at a D.O.C. or vendor facility at the time of release from a prior prison sentence, as they will surely argue that the P.R.R. Act is being arbitrarily applied.

The P.R.R. Act does not involve a suspect class, and this Court has found that the Act is rationally related to a legitimate state interest.

> While the Act's classification scheme does not differentiate based upon the character of the releasee's prior crimes, it *does* focus on the character (and severity) of the latest criminal conduct, together with the fact that recent imprisonment did not dissuade the defendant from engaging in the qualifying offense. Thus, for this particular set of "violent felony offenders" (meaning, in this context, those offenders who commit any of the Act's enumerated felonies), the legislative goal of preventing the commission of additional serious crimes is accomplished by providing enhanced incapacitation, through longer prison terms.

Grant, 770 So. 2d at 660, *citing Cotton*, 769 So. 2d at 356. " 'It is not a requirement of equal protection that every statutory classification be all-inclusive.' Rather, 'the statute must merely apply equally to members of the statutory class and bear a reasonable relationship to some legitimate state interest.' " *Grant*, 770 So. 2d at 660. This Court has rejected the argument that the P.R.R. statute has been arbitrarily applied. " '[S]ubstantive penological policies announced' by the Florida Legislature in enacting this statute are legitimately furthered by the structure of the Act." *Grant v. State*, 770 So. 2d 655, 661 (Fla. 2000), *citing Cotton*.

> Here, the classification of a "prison releasee reoffender" as one who commits an enumerated crime "within 3 years of being released from a state correctional facility operated by the Department of Corrections or a private vendor," § 775.082(8)(a) 1., Fla. Stat. (1997), does not appear to be wholly arbitrary. Rather, such classification is reasonably related to the legitimate state interest of preventing violent crimes committed by "recidivists who have shown either a repeated or an escalating pattern of criminal behavior, reflecting resistance to prison's prospectively deterrent effect."

Grant, 770 So. 2d at 661. However, the sentencing enhancement would "violate equal protection [ ] if it causes 'different treatments so disparate as relates to the difference in classification so as to be wholly arbitrary'". *Grant*, 770 So. 2d at 660.

If this Court adopts the *Lewars* court's analysis, the P.R.R. statute may not survive a future equal protection challenge for it may certainly be considered arbitrary that the deciding factor in whether a sentencing enhancement is applied is

where the prisoner spent the last day, or minute, of his sentence prior to release. Prisoners who serve the last day of their sentence in prison are materially no different than those prisoners who serve the last day in any facility other than one operated by D.O.C.: prisoners in the county jail who are being resentenced (including those with split sentences and all juvenile offenders currently being resentenced based on the *Graham*, *Miller*, *Horsley Kelsey*)[1], prisoners who are serving the remainder of their sentence in a county or medical facility, and defendants who would deliberately prolong their cases to prevent being physically transferred to D.O.C. Additionally, it would be just as arbitrary a factor to consider that a county jail run by the Corrections Corporations of America (C.C.A.) may be considered a "private vendor" which would fall under the statute; whereas a county jail run by the sheriff's office would be a public facility. This constitutes absurd results.

The *Lewars* court abrogated the lawmaking power entrusted to the Legislature by interpreting § 775.082(9)(a)1, Florida Statutes, in a way that redefines the class of people affected by the statute. The court failed to conduct the correct legal analysis to interpret the plain meaning of the § 775.082(9)(a)1, by failing to read the statute in pari materia with the other paragraphs of the section, and for ignoring legislative purpose and intent in enacting the PRR Act. Additionally, the *Lewars* court ignored

[1] *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012); *Horsley v. State*, 160 So. 3d 393 (Fla. 2015); and *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016).

the differences between legal and physical custody as Lewars was legally released by D.O.C. even though he was physically present in a county facility. Finally, the *Lewars* court's interpretation leads to absurd results which cannot be reconciled with legislative intent or constitutional protections. The Second District Court of Appeal's opinion in *Lewars* must be reversed.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court quash *Lewars* and approve the decisions in the First, Fourth and Fifth District Courts of Appeal.

CERTIFICATE OF SERVICE

I certify that a copy of this brief has been furnished to the following electronically via the Florida Courts e-filing portal on January 18, 2018: Matthew Overpeck, Assistant Public Defender, at moverpeck@pd10.org; appealfilings@pd10.state.fl.us, Office of the Public Defender, P.O. Box 9000 -- Drawer PD, Bartow, Florida 33831.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Times New Roman 14-point font.

Respectfully submitted and certified,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ John Klawikofsky
JOHN KLAWIKOFSY
CHIEF ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 930997

/s/ Lisa Martin
LISA MARTIN
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 72138
Office of the Attorney General
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa FL 33607-7013
CrimAppTpa@myfloridalegal.com
Lisa.martin@myfloridalegal.com
(813)287-7900, Fax:(813)281-5500

COUNSEL FOR PETITIONER