

IN THE SUPREME COURT OF FLORIDA

ROBERT R. MILLER,

Petitioner,

v.

CASE NO. SC17-1598

DCA CASE NO. 1D13-5503

STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW  
FROM THE FIRST DISTRICT COURT OF APPEAL

**PETITIONER'S INITIAL BRIEF ON THE MERITS**

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## **PRELIMINARY STATEMENT**

Mr. Miller was the Appellant in the First District Court of Appeal, and the Defendant in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida. In this Initial Brief, he will be referred to by his proper name or as “Petitioner.” Respondent, the State of Florida, was both the Appellee and prosecution below, and will be referred to herein as “Respondent” or as “the State.”

The record on appeal consists of four volumes. References to the record will be made by the volume number in Roman Numerals, followed by the appropriate page number, both in parentheses. This is an appeal from the decision rendered by the First District Court of Appeal following remand by this Court.

## **STATEMENT OF THE CASE AND PROCEDURAL BACKGROUND**

Mr. Miller was charged by amended information with kidnapping with a firearm, with a specific allegation that during the commission of the offense he actually possessed a firearm (Count I), with aggravated battery with a deadly weapon, with a specific allegation that during the commission of the offense he actually possessed a firearm (Count II), and with possession of a firearm by a convicted felon (Count III). The alleged victim in Counts I and II was Steven Cooley, and the date of the alleged offenses was March 29, 2013. (I-38)

After his jury trial, Mr. Miller was found guilty by the jury of kidnapping in Count I, with a specific finding that he actually possessed a firearm, guilty in Count II of aggravated battery, with a specific finding that he actually possessed a firearm, and guilty in Count III of possession of a firearm by a convicted felon, with a specific finding that he actually possessed a firearm. (I-67-69, IV-497, 499, 512)

At sentencing, Mr. Miller was determined to be an habitual felony offender (HFO), and was sentenced as an HFO on all three counts. On count I, he was sentenced to 20-years incarceration, with a mandatory minimum 10 years, on count II to 10-years incarceration, with a mandatory minimum 10-years, and on count III to 5-years incarceration, with a mandatory minimum 3 years. The trial

court agreed with the State that the mandatory minimums were required to be served consecutively, and ordered the sentences on all three counts, including the mandatory minimums, to be served consecutively. (I-70-78, 133-144)

An appeal was filed in the First District, with the sole issue raised being that the trial court was in error in believing that it was required to sentence Mr. Miller to consecutive mandatory minimum sentences. The First District affirmed the sentence in *Miller v. State*, 151 So.3d 566 (Fla. 1<sup>st</sup> DCA 2014)(hereinafter *Miller I*), citing its holding in *Walton v. State*, 106 So.3d 522 (Fla. 1<sup>st</sup> DCA 2013)(reversed, *Walton v. State*, 208 So.3d 60 (Fla. 2016)). In *Miller v. State*, 2017WL2302346 (Fla. 2017), this Court quashed the decision and remanded the case to the First District for reconsideration in light of its decisions in *Walton v. State*, 208 So.3d 60 (Fla. 2016), and *Williams v. State*, 186 So.3d 989 (Fla. 2016).

In its decision on remand, the First District opined that this Court's decisions in *Williams* and *Walton*, did not explicitly address the factual situation present in the instant case where multiple gun-related offenses were committed, but the offenses involved only one victim who sustained only one physical injury. *Miller v. State*, 224 So.3d 851, 852 (Fla. 1<sup>st</sup> DCA 2017)(hereinafter *Miller II*). Based on that analysis, the First District held that it was within the discretion of the trial court whether to impose Mr. Miller's mandatory minimum sentences concurrently

or consecutively. The First District certified conflict with the decision of the Fifth District Court of Appeal in *Torres-Rios v. State*, 205 So.3d 883 (Fla. 5<sup>th</sup> DCA 2016).

Mr. Miller filed a petition for discretionary review in this Court. The petition was granted and this Court accepted jurisdiction of this case on October 9, 2017.

## STATEMENT OF THE FACTS

The facts relevant to this appeal are primarily based on the testimony of State witness Stephen Cooley, and are as follows:

The State's theory was that the incident leading to the charges in this case arose from a dispute between Stephen Cooley, a confidential informant for the Jacksonville Sheriff's Office, and Miller, over an alleged agreement between the two that Cooley would provide Lortabs to Miller as repayment for money that Miller had loaned to Cooley. (III-196-202) When Mr. Miller became aware that Cooley had previously given the pills to someone else, he became angry and threatened Cooley with a handgun.(III-206)

Mr. Miller drove Cooley to Miller's house and, as they entered the house, Miller hit Cooley in the back of the head with the gun. Mr. Miller continued to hit Cooley with the gun, yelling that he wanted his pills or his money. Cooley testified that he was held captive in the house for approximately two hours.(III-207-209, 215-216)) It wasn't until Cooley convinced Miller to let him make a phone call to his "bossman" to get money, and Cooley instead called the detective he had been working with, that the incident was brought to a close and Mr. Miller arrested. (III-218-224, 268-269, 271-279)



## SUMMARY OF THE ARGUMENT

In holding that the trial judge had discretion to sentence Mr. Miller to concurrent or to consecutive mandatory minimums, the First District opined that the factual situation in this case, multiple gun-related offenses with only one victim and one injury, was not addressed by this Court's decisions in *Williams v. State*, 186 So. 3d 989 (Fla. 2016), and *Walton v. State*, 208 So. 3d 60 (Fla. 2016)(Walton II). Mr. Miller respectfully disagrees with the First District's analysis.

The multiple offenses in this case, kidnapping with a firearm, aggravated battery with a firearm, and possession of a firearm by a convicted felon, all occurred in a single episode, there was only a single victim, and, most significant, there was no discharge of a firearm; the single injury occurred when Mr. Miller allegedly struck the victim with the gun. Mr. Miller contends that this factual situation was addressed by this Court in *Williams*, and *Walton II*, as well as in earlier cases: mandatory minimums must be concurrent because there was no discharge of a firearm.

## **ARGUMENT**

**ISSUE: CONSECUTIVE MANDATORY MINIMUMS ARE NOT AUTHORIZED BY SECTION 775.087(2)(d), FLORIDA STATUTES, WHERE THERE IS NO DISCHARGE OF A FIREARM.**

### **Standard of Review**

“Judicial interpretations of statutes are pure questions of law subject to de novo review.” *Johnson v. State*, 70 So.3d 1305, 1310 (Fla. 2012). Resolution of this case requires an interpretation of Section 775.087(2)(d), the “10-20-Life” statute, and, thus, is subject to de novo review.

### **Merits**

In holding that the trial judge had discretion to sentence Mr. Miller to concurrent or to consecutive mandatory minimums, the First District opined that the factual situation in this case, multiple gun-related offenses with only one victim and one injury, was not addressed by this Court’s decisions in *Williams v. State*, 186 So. 3d 989 (Fla. 2016), and *Walton v. State*, 208 So. 3d 60 (Fla. 2016)(Walton II). Mr. Miller respectfully disagrees with the First District’s analysis, and contends that the factual scenario presented by the instant case has

been decided by this Court and requires the trial court to impose concurrent mandatory minimum sentences on resentencing.

Mr. Miller was charged with three felonies allegedly committed while he possessed a firearm<sup>1</sup>. The alleged offenses were committed in a single episode, and involved a single victim and injury caused by being struck with the firearm. It is undisputed that the firearm was never discharged.

In its in-depth analysis in *Williams v. State*, 186 So.3d 989, this Court looked at how courts had imposed the mandatory minimums of the 10-20-Life statute both prior to and after the enactment of the provision at issue there, section 775.087(2)(d), F.S., and held that the controlling precedent established that, “Generally, consecutive sentencing of mandatory minimum imprisonment terms for multiple firearm offenses is impermissible if the offenses arose from the same criminal episode and a firearm was possessed but not discharged.” *Williams*, at 993, citing *State v. Sousa (Sousa II)*, 903 So.2d 923 (Fla. 2005). The Court in *Williams*, went on to state that “if multiple firearm offenses are committed

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<sup>1</sup>The charged offenses and the offenses of conviction are kidnapping with a firearm, aggravated battery with a firearm, and possession of a firearm by a convicted felon. (I-38, 67-69, IV-497, 512) The opinion in *Miller II*, incorrectly states that the offenses are attempted second-degree murder and possession of a firearm by a convicted felon. *Miller II* at 852. The decision by the First District and the legal analysis is not changed by the error in the stated offenses.

contemporaneously, during which time multiple victims are shot at, then consecutive sentencing is permissible but not mandatory.” *Williams*, at 993, again citing and discussing *Sousa II*, and also *State v. Christian*, 692 So.2d 889 (Fla. 1997), and *State v. Thomas*, 487 So.2d 1043 (Fla. 1986), as support for what the law is, and what it has always been, on this issue. This holding was reiterated in *Walton II*, at 64, that “consecutive sentencing of mandatory minimum imprisonment terms for multiple firearm offenses is impermissible if the offenses arose from the same criminal episode and a firearm was merely possessed but not discharged.”

It is not entirely clear by the First District’s opinion why it finds the instant factual situation is not addressed by this Court’s earlier holding. If it is because of the multiple offenses committed, this issue was addressed in the holding in *Williams*: if multiple firearm offenses are committed contemporaneously, and multiple victims shot at, the consecutive sentencing is permissible. *Williams at 993*. By the same token then, if there is no discharge of a firearm - such as is the case here - then even with the commission of multiple offenses, consecutive mandatory minimum sentencing is *not* permissible.

The single injury to the alleged victim was caused by being hit with the firearm, not by being fired upon. Mr. Miller contends that the facts of his case are

plainly covered by the holding in *Williams*, and *Walton II*, and asks this Court to remand this case with directions to the First District to remand his case to the trial court for resentencing with directions that any mandatory minimum sentences must be imposed concurrently.

## **CONCLUSION**

Based on the reasoning, argument, and citations of authority presented herein, Petitioner respectfully requests that this Court quash the decision of the First District and remand this case for resentencing with directions that any mandatory minimum sentences must be imposed concurrently.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished via the Florida Courts E-Filing Portal to Kaitlin R. Weiss, Assistant Attorney General, at [crimapptlh@myfloridalegal.com](mailto:crimapptlh@myfloridalegal.com), and, via US Mail, to Robert R. Miller, Jail # 2017028100, John E. Goode Pretrial Detention Facility, 500 E Adams St., Jacksonville, FL 32202, on this date, November 20, 2017.

**CERTIFICATE OF FONT SIZE**

I HEREBY CERTIFY that, pursuant to Rule 9.210 of the Florida Rules of Appellate Procedure, this brief was typed in Times New Roman 14 Point font.

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