

IN THE SUPREME COURT OF FLORIDA

ROBERT R. MILLER, :

Petitioner, :

v. :

CASE NO: SC17-1598
(LC No.: 1D13-5503)

STATE OF FLORIDA, :

Respondent. :

_____ /

SEEKING DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL
CASE NO: 1D13-5503

JURISDICTIONAL BRIEF OF PETITIONER

ANDY THOMAS
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TABLE OF CONTENTS

	<u>PAGE (S)</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
THIS COURT SHOULD ACCEPT JURISDICTION TO RESOLVE THE CERTIFIED CONFLICT BETWEEN <u>MILLER</u> AND <u>TORRES-RIOS</u>	4
CONCLUSION	6
CERTIFICATE OF SERVICE	7
CERTIFICATE OF FONT SIZE	7

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<u>Miller v. State</u> , ___ So.3d. ___, Fla. App. 1 st District, August 14, 2017	1-5
<u>Miller v. State</u> , 151 So.3d 566 (Fla. 1 st DCA 2014).	2
<u>Torres-Rios v. State</u> , 205 So.3d 883 (Fla. 5 th CA 2016).	2-5
<u>Walton v. State</u> , 208 So.3d 60 (Fla. 2016)..	2
<u>Williams v. State</u> , 186 So.3d 989 (Fla. 2016).	2, 4

STATUTES

Section 775.087(2) (d), Florida Statutes..	4
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CONSTITUTIONS

Article V, Section 3(b) (3), Florida Constitution.	3, 4
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PRELIMINARY STATEMENT

Petitioner seeks review of the decision in Miller v. State, ___ So.3d. ___, Fla. App. 1st District, August 14, 2017 (attached.) Petitioner was the Appellant and the Respondent was the Appellee in the First District Court of Appeal. The parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

Petitioner was convicted at trial of attempted second-degree murder and possession of a firearm by a convicted felon, and was sentenced to consecutive mandatory minimum terms of imprisonment. Petitioner's consecutive mandatory minimum sentences were affirmed by the First District Court of Appeal in Miller v. State, 151 So.3d 566 (Fla. 1st DCA 2014). This Court quashed that decision and remanded the case to the First District for reconsideration in light of this Court's decisions in Walton v. State, 208 So.3d 60 (Fla. 2016), and Williams v. State, 186 So.3d 989 (Fla. 2016). On remand, the First District reversed Petitioner's sentences and remanded to the trial court with directions for the trial court to reconsider whether, in its discretion, it wanted to sentence Petitioner to consecutive or concurrent minimum mandatory sentences. Miller v. State, ___ So.3d ___ (Fla. 1st DCA, August 14, 2017) (hereinafter Miller II). In its holding, the First District certified conflict with Torres-Rios v. State, 205 So.3d 883 (Fla. 5th CA 2016). Petitioner filed a notice of discretionary review.

SUMMARY OF THE ARGUMENT

Under Article V, Section 3(b)(3), Florida Constitution, this Court has jurisdiction and the discretion to exercise that discretion to review the First District's decision in Miller v. State, ___So.3d___ (Fla. 1st DCA, August 14, 2017), where the court certified conflict with the Fifth District's decision in Torres-Rios v. State, 205 So.3d 883 (Fla. 5th DCA 2016). The issue raised by the conflict is whether Section 775.087(2), expressly authorizes consecutive mandatory minimum sentences where a defendant commits two gun-related offenses in a single criminal episode, but the offenses involve only one victim and one physical injury. The First District held that consecutive mandatory minimum sentences are authorized under these facts, while the Fifth District held that consecutive mandatory minimum sentences were not permitted in this scenario. This Court should exercise its jurisdiction and resolve the conflict.

ARGUMENT

**THIS COURT SHOULD ACCEPT JURISDICTION TO RESOLVE
THE CERTIFIED CONFLICT BETWEEN MILLER AND TORRES-RIOS**

This court has jurisdiction to review the First District's decision in Miller II under Article V, Section 3(b)(3), of the Florida Constitution. In Miller II, the First District certified conflict with the Fifth District's decision in Torres-Rios v. State, 205 So.3d 883 (Fla. 5th DCA 2016).

The issue raised by the First District's decision is whether Section 775.087(2)(d), F.S., expressly authorizes consecutive mandatory minimum sentences where a defendant commits two or more gun-related offenses but the offenses occurred in a single episode and involved only one victim and one injury. In Petitioner's case, he was sentenced to consecutive mandatory minimum sentences.

In Torres-Rios, the Fifth District held that consecutive mandatory minimums were not permissible where there was only a single discharge of the firearm and only one person was shot during a single criminal episode. The Fifth District relied upon this Court's decision in Williams v. State, 186 So.3d 989, 993 (Fla. 2016), in its holding. The First District held in Miller II that this issue had not been explicitly decided by this Court in either Williams.

The First District's certification of conflict with Torres-Rios provides this Court with jurisdiction and with the

discretion to exercise that jurisdiction. This Court should accept jurisdiction and resolve the conflict between Miller II and Torres-Rios.

CONCLUSION

Petitioner requests the Court to accept this case for discretionary review and order briefing on the merits.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail, to Trisha Meggs Pate, Office of the Attorney General, at crimapptlh@myfloridalegal.com, and a true and correct copy has been sent via US Mail to Robert R. Miller, DOC # J25430, Graceville Correctional Facility, 5168 Ezell Road, Graceville, Florida, 32440, on this 6th day of September, 2017.

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that, pursuant to Florida Rule of Appellate Procedure 9.210, this brief was typed in Courier New 12 Point.

Respectfully submitted,

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