

IN THE SUPREME COURT OF FLORIDA

ROBERT R. MILLER,

Petitioner,

v.

CASE NO. SC17-1598

DCA CASE NO. 1D13-5503

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF ON THE MERITS

ANDY THOMAS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

References to the Answer Brief filed by Respondent, will be made by “AB,” followed by the appropriate page number, both in parentheses. All other references to the parties and to the record on appeal will be as set forth in Petitioner’s Initial Brief on the Merits.

STATEMENT OF THE CASE AND PROCEDURAL BACKGROUND

Petitioner relies upon his Statement of the Case and Procedural Background as set forth in his Initial Brief on the Merits.

STATEMENT OF THE FACTS

Petitioner relies upon his Statement of the Facts as set forth in his Initial Brief on the Merits.

ARGUMENT

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

Petitioner disagrees with Respondent's argument that the offenses in the case at hand constituted separated criminal episodes, and its conclusion that, thus, consecutive sentences are permissible. (AB-8) Petitioner contends that Respondent's analysis is flawed in several respects:

Although Respondent argues that the offenses were separate criminal episodes, this was not a finding made by the First District, nor relied upon by the court in its analysis or holding in this case. Moreover, the facts do not support a finding of separate episodes: the armed kidnapping, the aggravated battery with a firearm, and the possession of a firearm by a convicted felony, were a single, on-going criminal episode. The episode began at the Walgreen's drug store, and continued unbroken until Petitioner's arrest at the apartment a couple of hours later. If Respondent's argument of separate episodes is somehow based on the alleged victim's trial testimony that Petitioner hit him repeatedly with the firearm over a period of time, Petitioner disagrees with this analysis. Although Petitioner does not concede that it would have been legally permissible to do so, the State could perhaps have charged more than one count of aggravated battery with a

firearm. Nevertheless, this did not happen, and it does not change the analysis in any case.

Respondent cites *Woods v. State*, 615 So.2d 197, 198 (Fla. 1st DCA 1993), as support for its argument that there were separate episodes with a firearm in this case (AB-11-12), however, *Woods* does not support the argument. In fact, the analysis in *Woods* lends supports to a finding that the case at hand comprised only a single criminal episode. In *Woods*, the First District held that the determination of whether consecutive sentencing is permissible, is based on “whether separate victims are involved, whether the crimes occurred in a separate location, and involved some break in time from when the first crime was completed until the second crime began.” 615 So.2d at 199. Although Respondent chooses to ignore this fact in its reliance on the language in *Woods*, there was only one victim in the instant case. Moreover, the facts do not support a finding that there was temporal break in the offenses, and the First District made no such finding. The most the instant facts support is a finding that the single criminal episode began in one location and continued to another.

As argued in Petitioner’s Initial Brief, multiple firearm offenses committed in a single episode, with no discharge of the firearm, and with a single victim and a single injury, as presented in the instant case, are covered by this Court’s holdings

in *Williams v. State*, 186 So.3d 989 (Fla. 2016), and *Walton v. State*, 208 So.3d 60 (Fla. 2016). Petitioner asks this Court to remand this case to the First District with directions to remand this 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, 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, January 30, 2018.

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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