IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO.: SC17-843

STATE OF FLORIDA,

Petitioner,

v.

KENNETH PURDY,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

MERITS BRIEF OF RESPONDENT

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STATEMENT OF CASE AND FACTS

Purdy accepts the State's recitation of the case and facts subject to the following. The Fifth District Court of Appeals, in *Purdy v State*, provided a brief history of the case as follows:

> In 1997, following a jury trial, [Purdy] was convicted of felony first-degree murder, armed robbery, and armed carjacking. [Purdy] was a juvenile at the time that he committed these crimes. The trial court sentenced [Purdy] to serve life in prison without the possibility of parole for the murder conviction and two separate 112.7–month prison sentences for the armed robbery and armed carjacking convictions. The court ordered the 112.7–month prison sentences to run concurrently with each other but consecutively to the life sentence. We affirmed [Purdy]'s convictions and sentences on direct appeal without opinion. *Purdy v. State*, 725 So.2d 1137 (Fla. 5th DCA 1998).
>
> Over the ensuing years, [Purdy] filed several motions seeking postconviction relief. These motions were denied by the lower court, and the denial orders were affirmed on appeal by this court. Nevertheless, on May 21, 2015, [Purdy] filed a successive motion for postconviction relief based upon the United States Supreme Court's opinion in *Miller v. Alabama*, —— U.S. ——, 132 S.Ct. 2455, 2469, 183 L.Ed.2d 407 (2012), where the Court held that a sentencing scheme that mandates a life sentence without the possibility of parole for a juvenile offender who commits a homicide violates the Eighth Amendment of the United States Constitution. [Purdy] argued that although his life sentence was final long before Miller was released, he is now entitled to relief from this sentence because the Florida Supreme Court recently held that *Miller* was to be applied retroactively. *See Falcon v. State*, 162 So.3d 954, 962–63 (Fla. 2015). The postconviction court agreed, summarily granted the motion, and set the matter for resentencing.

On November 18, 2015, the court held the resentencing hearing. At this hearing, [Purdy]'s counsel requested that a "credit time served" sentence be imposed, suggesting to the court that it could craft a "sentencing scheme" that would allow [Purdy] to be immediately released. The State countered that [Purdy] should be resentenced to serve fifty years in prison for the murder conviction. Pertinent to this appeal, the State also advised the court that it would need to address at this hearing or at the subsequent review hearing whether [Purdy] was also entitled to be resentenced on his previously imposed consecutive sentences for the armed robbery and armed carjacking.

The court, after considering the factors set forth in section 921.1401(2)(a)–(j), Florida Statutes (2015), resentenced [Purdy] to serve forty years in prison for the murder conviction, with appropriate jail credit and prison credit awarded, but did not separately provide for a sentence review hearing in this new sentence. The court declined to hold the review hearing that day, advising [Purdy] that he would first need to file the necessary paperwork requesting the review hearing and, that at this later hearing, the court would determine whether "[Purdy] can be released." Additionally, the court did not modify [Purdy]'s sentences for the armed robbery or armed carjacking convictions, concluding that it did not have the discretion or authority to do so. As a result, [Purdy]'s total or aggregate sentence was now 49 years, 4.7 months (the modified 40–year sentence for the murder conviction, followed by the 112.7–month sentences for the robbery and carjacking convictions, which remained concurrent to each other, but consecutive to the sentence for murder).

Consistent with the court's direction, the following day, [Purdy] filed an application for sentence review pursuant to sections 921.1402(2) and (4), Florida Statutes (2015). In his application, [Purdy] asserted that the court had the authority at this review hearing to modify his sentences for the robbery and carjacking convictions in addition to modifying his forty-year sentence for the murder conviction, based on the court's authority to correct an unconstitutional sentencing scheme.

Alternatively, [Purdy] suggested that the court could modify his sentence for the murder in such a fashion to effectuate his "immediate release to society."

On December 18, 2015, the court conducted the sentence review hearing. After receiving brief testimony from [Purdy], together with argument from counsel, the court specifically found [Purdy] to have been rehabilitated and that it reasonably believed [Purdy] to be fit to reenter society. [Purdy]'s counsel reminded the court that in his application for the review hearing, counsel had indicated to the court that it had the authority at this review hearing to modify [Purdy]'s entire sentencing scheme and not just the modified forty-year sentence for the murder. Alternatively, counsel suggested that the court could modify [Purdy]'s forty-year sentence down to a ten-year prison sentence, arguing that because [Purdy] had been in custody for over twenty years, the additional time [Purdy] had already served could be applied towards his remaining 112.7–month prison sentences for the armed robbery and armed kidnapping convictions, thereby allowing [Purdy] to be immediately released from prison.

The court first calculated that, at the time of the review hearing, [Purdy] had been in custody on this case for a total of twenty years, six months, and thirteen days. It then modified [Purdy]'s sentence on the murder conviction to this amount of time served, to be followed by ten years of probation. However, the court again concluded that it lacked jurisdiction to consider modifying the 112.7–month prison sentences for the armed robbery and armed carjacking convictions.[1]

[1] After asking for clarification, the trial court stated:

> It is my opinion that I don't have jurisdiction on Counts 2 and 3; so the order entered by Judge Mihok I don't believe I have jurisdiction over. So that's my ruling. And - - and if I'm wrong, I'm let the Fifth tells me that, and I take different action.
>
> It is my opinion that I don't have jurisdiction on Counts 2 and 3; so the order entered by Judge Mihok I don't believe I have jurisdiction

Purdy v. State, 42 Fla. L. Weekly D272a, *1-2 (Fla. 5th DCA Jan. 27, 2017)

On appeal, Purdy challenged the trial court's decision to not modify the armed robbery and armed carjacking sentences after it found at the sentence review hearing that he was rehabilitated and reasonably believe to be fit to reenter society. (Initial Brief at 6-15). Purdy first asserted that the trial court had jurisdiction to modify the sentencing scheme after it resentenced him pursuant to *Miller* and chapter 2014-220, Laws of Florida and he had served 15 years in prison. Purdy also argued that section 921.1402(2)(d), Florida Statutes, permitted review of the armed carjacking and armed robbery sentences because (1) his non-homicide offenses were punishable by life, (2) the trial court sentenced him to a term of 20 years or more, and (3) he had served over 20 years in prison. (Initial Brief at 6-15).

As it relates to the armed robbery and armed carjacking sentencing issue, the Fifth District Court of Appeal, based on several cases and statutes including *Tyson v. State*, 199 So. 3d 1087 (Fla. 5th DCA 2016), *Thomas v. State*, 177 So. 3d 1275 (Fla. 2015), *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016), and chapter 2014-220, Laws of Florida, concluded "that when a juvenile offender is entitled to a sentence review hearing, the trial court is required to review the aggregate sentence the juvenile offender is serving in determining whether to modify the offender's

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> over. So that's my ruling. And - - and if I'm wrong, I'm let the Fifth tell me that, and I'll take different action.

(R. 177).

sentence based on maturity and rehabilitation." *Purdy*, 42 Fla. L. Weekly at D272a at *3. The Fifth District reversed and remanded for "the trial court to conduct a second review hearing to address whether to modify…" Purdy's "49-year, 4.7 month prison sentence." *Purdy*, 42 Fla. L. Weekly D272a at *3.

After the State filed a motion for rehearing, clarification, or request for certified question arguing that the homicide and nonhomicide offenses could not be aggregated for purposes of judicial review, the Fifth District certified the following question:

> WHEN A JUVENILE OFFENDER IS ENTITLED TO A SENTENCE REVIEW HEARING, IS THE TRIAL COURT REQUIRED TO REVIEW THE AGGREGATE SENTENCE THAT THE JUVENILE OFFENDER IS SERVING FROM THE SAME SENTENCING PROCEEDING IN DETERMINING WHETHER TO MODIFY THE OFFENDER'S SENTENCE BASED UPON DEMONSTRATED MATURITY AND REHABILITATION?

Purdy, 42 Fla L. Weekly D967a at *1.

This Court accepted jurisdiction of the case. The State filed its initial brief on the merits. Purdy submits the following merits brief in response.

SUMMARY OF THE ARGUMENT

To faithfully apply chapter 2014-220, Laws of Florida, a trial court must consider, upon a juvenile offender's eligibility, the aggregate sentence the juvenile offender is serving from the same sentencing proceeding in determining whether to

modify their sentence based on maturity and rehabilitation. This Court should answer the certified question in the affirmative.

As it relates to this case, the trial court found Purdy to not be the killer and, at the sentence review hearing, to be rehabilitated and reasonably believed to be fit to reenter society. Because chapter 2014-220, Laws of Florida, applied, Purdy was serving a 49-year, 4.7 month aggregate prison sentence for both homicide and nonhomicide offenses occurring in the same criminal episode, and Purdy had served over 20 years in prison, the trial court was required to modify his aggregate prison sentence to at least 5 years of probation. The trial court's failure to do so, as recognized by the Fifth District Court of Appeal, constitutes reversible error.

ARGUMENT

In 2010, the United States Supreme Court held in *Graham v. Florida*, 560 U.S. 48 (2010) that

> the 8th Amendment of the U.S. Constitution prohibits states from sentencing juvenile nonhomicide offenders to life without providing a meaningful opportunity to obtain release. In 2012, the United States Supreme Court held in *Miller v. Alabama*[2] that the 8th Amendment of the U.S. Constitution prohibits a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders convicted of a homicide offense.

Fla. H.R., H.B. 7035, *1, 4 Final Bill Analysis (June 27, 2014) (emphasis added).

[2] *Miller v. Alabama*, 132 S.Ct. 2455 (2012)

In light of *Miller* and *Graham*, the Florida legislature enacted chapter 2014-220, Laws of Florida, to address the sentencing scheme for juveniles convicted of homicide and other qualifying nonhomicide offenses. *Id*. As it relates to this case, for certain homicide offenses where the juvenile offender did not actually kill, intend to kill, or attempt to kill the victim, the new juvenile laws provide that a juvenile who is sentenced to more than 15 years is entitled to review of their sentence after 15 years. § 921.1402(2)(c), Fla. Stat. (2015). For qualifying nonhomicide offenses, the new juvenile laws provide a juvenile who is sentenced to more than 20 years is entitled to review of his or her sentence after 20 years. § 921.1402(2)(d), Fla. Stat. (2015)

Upon becoming eligible, a juvenile offender is to submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. § 921.1402(4), Fla. Stat. (2015). The court of original jurisdiction, upon receipt of an application from an eligible juvenile offender, is then tasked with holding a sentence review hearing to determine whether the juvenile offender's sentence should be modified. § 921.1402(6), Fla. Stat. (2015). When determining if it is appropriate to modify the juvenile offender's sentence, the court is required to consider a number of factors. § 921.1402(6), Fla. Stat. (2015). If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court is

required to modify the sentence and impose a term of probation of at least five years. § 921.1402(7), Fla. Stat. (2015)

In a string of related cases, the Florida Supreme Court addressed the retroactive application of *Graham* and *Miller* and the appropriate remedy for juveniles unconstitutionally sentenced. *See Falcon v. State*, 162 So. 3d 954 (Fla. 2015) (life sentence for homicide offense unconstitutional); *Horsley v. State*, 160 So. 3d 393 (Fla. 2015) (life sentence for homicide offense unconstitutional); *Henry v. State*, 175 So. 3d 675 (Fla. 2015) (aggregate prison sentence which totaled ninety years unconstitutional); *Gridine v. State*, 175 So. 3d 672 (Fla. 2015) (seventy year sentence for nonhomicde offense unconstitutional). In sum, the Florida Supreme Court held that *Graham* and *Miller* apply retroactively. *Id*. In *Horsley*, the Florida Supreme Court crafted the appropriate remedy for juvenile sentences found to be unconstitutional. *Horsley*, 160 So. 3d at 393; *see also Gridine*, 175 So. 3d at 679 (adopting the same procedures for non-homicide offenses). Specifically, this Court held that the court should conduct a resentencing proceeding in conformance with chapter 2014-220, Laws of Florida, because "most juveniles should be provided 'some meaningful opportunity' for future release from incarceration if they can demonstrate maturity and rehabilitation." *Id*. at 406 (citing *Miller*, 132 S. Ct. at 2469).

For instance, in *Horsley*, the juvenile defendant was convicted of first-degree felony murder, robbery with a firearm while inflicting death and two counts of aggravated assault with a firearm and sentenced under a "sentencing scheme" to a mandatory term of life in prison without the possibility of parole.[3] *Horsley*, 160 So. 3d at 395-96. He appealed. *Id*. at 396. While appeal was pending, the defendant filed a motion to correct sentence, asserting statutory sentencing scheme was unconstitutional as applied to juveniles. *Id*. The trial court resentenced the defendant to life imprisonment without the possibility of parole. *Id*. He appealed and argued his sentence was unconstitutional pursuant to *Miller*. *Id*. at 397. This Court reversed and held that the appropriate remedy is to apply chapter 2014-220, Laws of Florida, to all juvenile offenders whose sentence are unconstitutional under *Miller*. *Id*. at 408. This Court concluded that it is the only way to comply with the commandments of the United State Supreme Court and to effectuate the intent of our legislature:

> In sum, applying chapter 2014-220, Laws of Florida, to all juvenile offenders whose sentences are unconstitutional under *Miller* is the remedy most faithful to the Eight Amendment principles established by the United States Supreme Court, to the intent of the Florida Legislature, and to the doctrine of separation of powers. Accordingly, this is the remedy we adopt.

[3] Horsley received thirty years with a twenty-five year mandatory-minimum term of imprisonment for the robbery, and five years' imprisonment each of the aggravated assaults.

Id. at 406. This Court instructed the trial court to hold an individualized sentencing hearing pursuant to section two of chapter 2014-220. *Id*. at 408. If the trial court sentenced the defendant to a term of years that exceeded 25 years and the defendant did not have a prior felony conviction from the enumerated list in chapter 2014-220, Laws of Florida, then he would be entitled to a judicial review of his sentence after 25 years. *Id*.

Likewise, in *Falcon*, the defendant who was 15 years old at the time of her offenses, was convicted of murder in the first degree and attempted armed robbery. *Falcon*, 162 So.3d at 957. She received a mandatory life sentence without parole for the murder and 207.5 months in prison for the attempted armed robbery. *Id*. The defendant's conviction and sentence were affirmed on direct appeal. *Id*. After issuance of *Miller*, the defendant moved for postconviction relief and/or to correct illegal sentence, seeking resentencing after an individualized sentencing hearing. *Id*. at 957-58. The trial court denied the motion. *Id*. at 958. The defendant appealed. *Id*. The District Court of Appeal held that *Miller* did not apply retroactively. *Id*. This Court determined that *Miller* applies retroactively to any juvenile offender seeking to challenge the constitutionality of his or her sentence. *Id*. at 958-59. This Court concluded that a trial court presented with a timely motion under rule 3.850 from any juvenile offender whose sentence is unconstitutional under *Miller* shall apply the juvenile sentencing legislation

enacted by the Florida Legislature in 2014 and conduct a resentencing proceeding consistent with the provisions of chapter 2014–220, Laws of Florida. *Id*. at 963. This Court noted, "[b]ecause Falcon has already served more than fifteen years of a sentence for her first-degree murder conviction, it is possible, depending on the sentence she ultimately receives on remand, that she will be immediately eligible for a sentence review after being resentenced." *Id*. at 963.

Since *Falcon*, *Horsely*, *Henry*, and *Gridine*, this Court has continued to expand juvenile offender sentencing jurisprudence in several key decisions. *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016) (juvenile offender's mandatory sentence of life with possibility of parole unconstitutional); *Landrum v. State*, 192 So. 3d 459 (Fla. 2016) (juvenile offender's non-mandatory sentence of life with possibility of parole unconstitutional); *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016) (all juvenile offenders whose sentences met the standard defined by the Legislature in chapter 2014-220, Laws of Florida, which includes any sentence longer than twenty years, are entitled to judicial review, not simply those term-of-years sentences that area "de facto life."); *Johnson v. State*, 215 So. 3d 1237 (Fla. 2017) (juvenile offender's sentence unconstitutional because it did not, even with gain time, provide a meaningful opportunity for early release based on demonstrated maturity and rehabilitation). A consistent theme throughout these decisions is to avoid "overly narrow interpretation[s][]" and to follow "the spirit of the United States Supreme

Court's recent juvenile sentencing jurisprudence." *Atwell*, 197 So. 3d at 1041; *see also Kelsey*, 206 So. 3d at 10 ("[i]t would be antithetical to the precept of *Graham* and chapter 2014-220, Laws of Florida, to interpret them so narrowly as to exclude a juvenile offender who happens to have been resentenced before this Court issued *Henry*."); *Johnson*, 215 So. 3d at 1242 ("State's interpretation of *Graham* is too narrow….").

Here, the trial court declared Purdy's sentence unconstitutional pursuant to *Miller* and provided application of chapter 2014-220, Law of Florida, as the appropriate remedy. Because the trial court resentenced Purdy to an aggregate sentence of 49 years, 4.7 months for both his homicide and nonhomicide offenses (40 year sentence for the murder conviction, followed by 112.7-month sentences for the robbery and carjacking offenses) and he had already served over 20 years in prison, Purdy became immediately eligible for judicial review of both his homicide and nonhomicide offenses. § 921.1402(2)(c) and (d), Fla. Stat. (2015).[4] After the

[4] Section 921.1402(2)(c) and (d), Fla. Stat. (2015), provide:

> (c) A juvenile offender sentenced to a term of more than 15 years under s. 775.082(1)(b)2., s.775.082(3)(a)5.b., or s. 775.082(3)(b)2.b. is entitled to a review of his or her sentence after 15 years.
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> (d) A juvenile offender sentenced to a term of 20 years or more under s. 775.082(3)(c) is entitled to a review of his or her sentence after 20 years. If the juvenile offender is not resentenced at the initial

trial court found at the sentence review hearing that Purdy was rehabilitated and reasonably believed fit to reenter society, the plain language of section 921.1402(7), Fla. Stat. (2015),[5] required it to consider his aggregate sentence and modify it to at least 5 years of probation. The trial court's failure to do so, as found by the Fifth District Court of Appeal, constitutes reversible error:

> In *Tyson v. State*, 199 So.3d 1087 (Fla. 5th DCA 2016), we recently held that a juvenile offender who was sentenced to serve thirty years in prison on one count, to be followed by fifteen years in prison on a second count, received an unconstitutional sentence because the aggregate sentence did not provide for a review hearing after the juvenile offender served twenty years in prison. 199 So.3d at 1087–89. Additionally, in *Thomas v. State*, 135 So.3d 590 (Fla. 1st DCA 2014), a juvenile homicide offender initially received a life sentence for first-degree murder and was resentenced, following *Miller*, to a term of forty years in prison for the murder and a concurrent thirty years in prison for an armed robbery conviction with no provision for a sentence review hearing. 135 So.3d at 590–91. The First District affirmed the concurrent sentences, *id.* but the Florida Supreme Court, in a brief, unanimous opinion, quashed the decision of the First District and remanded the case for resentencing in conformance with the framework established in the 2014 juvenile sentencing laws now

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> review hearing, he or she is eligible for one subsequent review hearing 10 years after the initial review hearing.

[5] Section 921.1402(7), Fla. Stat. (2015), provides:

> (7) If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.

codified in sections 775.082, 921.1401, and 921.1402 of the Florida Statutes. *Thomas v. State*, 177 So.3d 1275 (Fla. 2015).

More recently, in *Kelsey v. State*, 41 Fla. L. Weekly S600, —— So.3d ——, 2016 WL 7159099 (Fla. Dec. 8, 2016), the Florida Supreme Court reiterated that the constitutionality of a juvenile offender's sentence is not based on the length of the sentence, but rather, it is dependent upon whether the sentence provided the offender with a meaningful opportunity for early release based on maturation and rehabilitation. 41 Fla. L. Weekly at S602, —— So.3d at ——. The defendant in *Kelsey*, a juvenile nonhomicide offender, had initially received two life sentences, but following the United States Supreme Court's opinion in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010),[6] the defendant was resentenced to concurrent forty-five-year prison sentences, but without a sentence review hearing. *Id.* at S600–01, ——So.3d at ——. The First District affirmed the new sentences, concluding that the forty-five-year prison term did not constitute a de facto life sentence in violation of *Graham*. *Kelsey v. State*, 183 So.3d 439 (Fla. 1st DCA 2015). However, the supreme court remanded for resentencing, concluding that, consistent with its decision in *Henry v. State*, 175 So.3d 675 (Fla. 2015), all juvenile offenders whose sentences met the standard defined by the Legislature in chapter 2014–220, Laws of Florida, which includes any sentence longer than twenty years, are entitled to judicial review, not simply those term-of-years sentences that are "de facto life." *Kelsey*, 41 Fla. L. Weekly at S600–03, —— So.3d at ——.

Based on these cases, we conclude that when a juvenile offender is entitled to a sentence review hearing, the trial court is required to review the aggregate sentence the juvenile offender is serving in determining whether to modify the offender's sentence based upon demonstrated maturity and rehabilitation. We therefore hold that the lower court erred in failing to consider Appellant's aggregate 49–year, 4.7–month prison sentence at the review hearing and remand for the trial court to conduct a second review hearing to address whether to modify this sentence. If the court determines at this hearing that Appellant has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the aggregate sentence. *See* § 921.1402(7), Fla. Stat. (2015).

Purdy, 42 Fla L. Weekly D272.

In its merits brief, the State restates the question certified for review[6] and argues that the plain language of chapter 2014-220, Laws of Florida, does not permit a court to consider aggregated homicide and nonhomicide sentences for purposes of judicial sentence review because chapter 2014, Laws of Florida, distinguishes between homicide and nonhomicde convictions and sentences. The State's plain language argument regarding its revised question must be rejected because it is an inconsistent and overly narrow interpretation of chapter 2014-220, Laws of Florida. The argument also runs afoul to "the spirit of the United States Supreme Court's recent juvenile sentencing jurisprudence."

Recently, in *Hatten v. State*, 203 So. 3d 142 (Fla. 2016), this Court stated the following about statutory interpretation:

> "A court's purpose in construing a statute is to give effect to legislative intent, which is the polestar that guides the court in

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[6] The State revised the certified question to be:

> A JUVENILE OFFENDER WHO OBTAINS JUDICIAL REVIEW FOR A HOMICIDE OFFENSE IS NOT ALSO ENTITLED TO JUDICIAL REVIEW OF A FIFTEEN-YEAR-OR-LESS SENTENCE FOR A CONTEMPORANEOUSLY COMMITTED NON-HOMICIDE CONVICTION WHERE THE SENTENCE DOES NOT VIOLATE THE EIGHTH AMENDMENET AND THERE IS NO STATUTORY AUTHORITY TO REVIEW THE NON-HOMICIDE OFFENSE.

(Petitioner's Merits Brief at 9). The revised question adopts the dissent's proposed certified question.

> statutory construction." *Id.* (quoting *Larimore v. State,* 2 So.3d 101, 106 (Fla.2008)). The court must begin with the " 'actual language used in the statute' ... because legislative intent is determined primarily from the statute's text." *Id.* at 747–48 (quoting *Heart of Adoptions, Inc. v. J.A.,* 963 So.2d 189, 198 (Fla.2007)). "[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning ... the statute must be given its plain and obvious meaning." *Id.* at 748 (quoting *Velez v. Miami–Dade Cty. Police Dep't,* 934 So.2d 1162, 1164 (Fla.2006)).

It is clear that the Legislature enacted chapter 2014-220, Laws of Florida, to modify the sentencing scheme for juvenile offenders convicted of certain serious felonies to comply with the United States Supreme Court's recent juvenile sentencing jurisprudence. Specifically, the Legislature enacted section 921.1402, Fla. Stat. (2015), to provide "sentence review proceedings to be conducted after a specified period of time by the original sentencing court for juvenile offenders convicted of certain offenses." Chapter 2014-220, *1, Laws of Florida. The Legislature did not use any language to limit a court from considering a juvenile offender's aggregate sentence arising from the same sentencing proceeding. Instead, it made clear that a juvenile offender, after having served either 15, 20, or 25 years, should be granted the opportunity to reenter society with at least 5 years of probation upon a court finding them "rehabilitated" and "reasonably believed to be fit to reenter society." § 921.1402, Fla. Stat. (2015). Ignoring a juvenile offender's aggregate prison sentence arising from the same sentencing proceeding would run afoul to the plain language of chapter 2014-220, Laws of Florida, and

not give homage to the Legislature and this Court's intent to follow "the spirit of the United States Supreme Court's recent juvenile sentencing jurisprudence." *Atwell*, 197 So. 3d at 1041

Failing to consider a defendant's aggregate sentence arising from the same sentencing proceedings, as recognized by the dissent and State, would also lead to absurd results. (Petitioner's Merit Brief at 13) ("[a]ny anomaly this may create, as pointed out by the dissent, is for our Legislature to correct and not the courts."). As present in this case, Purdy is serving an additional nine years in prison for his nonhomicide offenses despite being found rehabilitated and reasonably believed to be fit to reenter society and his sentence for the homicide offense, arising from the same criminal episode, being reduced to time served and 10 years of probation. Following the dissent and State's argument would lead to additional absurd results.[7] *Martin v. State*, 367 So. 2d 1119, 1120 (Fla. 1st DCA 1979) (a statute should not be construed to bring about an unreasonable or absurd result).

In sum, chapter 2014-220, Laws of Florida, requires a trial court to review, upon a juvenile offender's eligibility, the aggregate sentence that the juvenile offender is serving from the same sentencing proceeding in determining whether to modify the offender's sentence based on maturity and rehabilitation. Failing to

[7] As additional illustration, under the dissent and State's view, a juvenile offender sentenced to 25 years for a homicide offense and a consecutive 19 year and 364 day sentence for a nonhomicide offense would not be entitled to review of their nonhomicide offense even though they would serve more than 20 years.

follow this dictate would result in juvenile offenders not receiving the full-intended benefit of the law.

CONCLUSION

Based upon the foregoing arguments and legal authority the Respondent, Kenneth Purdy, respectfully requests that this Court answer the certified question in the affirmative.

DATED this 5th day of July, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email this 5th day of July, 2017 to the Attorney General's Office in the State of Florida at crimappdab@myfloridalegal.com.

/s/ Matthew R. McLain
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Initial Brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ Matthew R. McLain
Matthew R. McLain, Esquire