

IN THE SUPREME COURT OF FLORIDA

BERNARD JACKSON MOORE,

Petitioner,

v.

Case No. SC14-2266

STATE OF FLORIDA,

Respondent.

STATE'S RESPONSE TO THIS COURT'S ORDER TO SHOW CAUSE

RESPONDENT, the State of Florida (hereinafter State), responds to this Court's Order to Show Cause of January 20, 2017.

In its Order to Show Cause, this Court directed the State to show cause:

why this Court should not accept jurisdiction in this case, summarily quash the decision being reviewed, and remand this case to the district court for reconsideration in light of our decisions in Walton v. State, 2016 WL 7013855 (Fla. Dec. 1, 2016); Williams v. State, 186 So. 3d 989 (Fla. 2016).

(Ord. of January 20, 2017).

After a jury trial, Appellant was found guilty of 2 counts of aggravated assault and the jury made findings of actual possession and discharge of a firearm for each count (each count had a separate victim). Appellant was also found guilty of aggravated assault with actual possession of a firearm (with a third victim), discharging a firearm in public, and carrying a concealed firearm. The trial court ran the minimum mandatory sentences for the three aggravated assault charges consecutively to one another. (R-170-177; SH-6-8).

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The State agrees that this case is controlled by the language in Walton and in Williams. The case should be remanded to the district court for reconsideration. In Walton, this Court stated as follows:

First, the First District erred in concluding that the 10-20-Life statute required Walton's sentences to be imposed consecutively, irrespective of whether Walton fired, carried, or displayed a firearm. We recently addressed this issue in Williams v. State, 186 So. 3d 989 (Fla. 2016). We reiterated 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." Id. at 993. Accordingly, we quash the First District's opinion to the extent it is inconsistent with Williams.

Id. at *2. However, in Williams, this Court also stated as follows:

We later refused to extend Palmer's prohibition against consecutive sentencing to cases in which the defendant shoots at multiple victims, based upon our belief "that the legislature intended that the trial court have discretion to impose consecutively or concurrently the mandatory minimum time to be served." Thomas, 487 So. 2d at 1044. In Thomas, for example, Thomas shot a woman numerous times and also **shot at** the woman's son during the same encounter. **Because the record presented evidence of "two separate and distinct offenses involving two separate and distinct victims,"** we upheld the three-year mandatory minimum sentences imposed consecutively against Thomas. Id.

Id. at 992. This Court further stated in Williams, "[i]f, however, multiple firearm offenses are committed contemporaneously, during which time **multiple victims are shot at, then consecutive sentencing is permissible but not mandatory.**" Id.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by electronic mail on February 6, 2017: Megan Lynne Long, Esquire, at megan.long@flpd2.com.

Respectfully submitted and certified,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ *Virginia Harris* _____

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