Filing # 53481263 E-Filed 03/08/2017 05:42:50 PM

RECEIVED, 03/08/2017 05:43:26 PM, Clerk, Supreme Court

SUPREME COURT OF FLORIDA

JAVARUS LAMONT MORGAN,
Petitioner,

CASE NO. SC14-0757

vs.

L.T. NOS. 3D12-1848
01-21587

THE STATE OF FLORIDA,
Respondent.
_____/

RESPONSE TO ORDER TO SHOW CAUSE RE: JURISDICTION

Respondent, THE STATE OF FLORIDA, by and through undersigned counsel, pursuant to the Court's January 20, 2017 order, respectfully submits the following response. Respondent agrees that the Third District's decision below should be summarily quashed and the case should be remanded to the Third District for reconsideration, in light of *Walton v. State*, 2016 WL 7013855 (Fla. Dec. 1, 2016) and *Williams v. State*, 186 So. 3d 989 (Fla. 2016).

In 2014, the Third District affirmed the trial court's order denying Petitioner's motion to correct an illegal sentence, pursuant to Fla. R. Crim. P. 3.800(a). *Morgan v. State*, 137 So. 3d 1075 (Fla. 3d DCA 2014).

On appeal, Petitioner argued that Fla. Stat. § 775.087(2)(d), Florida's "10-20-Life" statute, did not authorize consecutive minimum mandatory sentences for multiple qualifying crimes committed during the same criminal episode when the defendant possesses but does not discharge a firearm. *Morgan*, 137 So. 3d at 1075. Citing to the First District's decision in *Walton*

v. State, 106 So. 3d 522 (Fla. 1st DCA 2013), the Third District rejected this argument and held that the statute required that any mandatory minimum term required by the statute – whether the defendant fires a gun, or only carries or displays it – shall be imposed consecutively to any other term imposed for any other felony. *Morgan*, 137 So. 3d at 1075. The Third District further certified conflict with *Irizarry v. State*, 946 So. 2d 555 (Fla. 5th DCA 2006). *Morgan*, 137 So. 3d at 1075.

After the Third District's decision in this case, the Florida Supreme Court granted review in *Walton*. *Walton*, 2016 WL 7013855 at *2. Petitioner filed a timely Notice to Invoke Discretionary Jurisdiction with this Court. After Petitioner filed a jurisdictional brief, the Court stayed proceedings pending the disposition of *Walton*.

In *Walton*, this Court ultimately held 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". *Walton*, 2016 WL 7013855 at *2 (citing *Williams*, 186 So. 3d at 993) (emphasis added).

In light of the fact that this Court rejected the categorical rule adopted by the First District in *Walton* requiring consecutive sentences for all qualifying offenses and the Third District in this case specifically relied on that rejected

rule and certified conflict, the Third District's decision should be quashed.

Only the facts in the Third District's decision may be relied upon to determine if this Court should exercise discretionary jurisdiction. *Wells v. State*, 132 So. 3d 1110, 1111 (Fla. 2014) (citing *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986)). While the Third District's decision indicates that Petitioner did possess – but did not discharge – a firearm during the crimes of conviction, the decision does not consider whether the crimes were committed during the same criminal episode. *Morgan*, 137 So. 3d at 1075. Petitioner raised his challenge below by way of motion pursuant to Fla. R. Crim. P. 3.800(a). *Morgan*, 137 So. 3d at 1075. Rule 3.800(a) requires Petitioner to carry the burden and demonstrate relief on the face of the record on this point. Fla. R. Crim. P. 3.800(a); *Johnson v. State*, 60 So. 3d 1045, 1049-50 (Fla. 2011); *Renaud v. State*, 926 So. 2d 1241, 1242 (Fla. 2006). Remand to the Third District is necessary to give Petitioner an opportunity to do so based on the record before that lower court.

Further, to the extent that this Court can rely on the record below, the record reveals that Petitioner's sentence was imposed pursuant to a plea agreement with the State. The only factual basis in support of the guilty plea is a police report which Petitioner cannot rely on to demonstrate relief under Rule 3.800(a). *Burgess v. State*, 831 So. 2d 137, 141-42 (Fla. 2002); *Compton*

v. State, 79 So. 3d 923, 925 (Fla. 2d DCA 2012). Even if Petitioner could demonstrate relief on the record below, Petitioner would have to move to withdraw from his negotiated plea with Respondent. *Stewart v. State*, 192 So. 3d 572, 573 (Fla. 5th DCA 2016); *Haynes v. State*, 106 So. 3d 481, 482-83 (Fla. 5th DCA 2013); *Dominguez v. State*, 98 So. 3d 198, 200-01 (Fla. 2d DCA 2012). The trial prosecutor would further be entitled to agree to any correction of Petitioner's sentence or instead to withdraw from the plea agreement and insist the parties proceed to trial on all charges. *Jordan v. State*, 28 So. 3d 929, 931 (Fla. 3d DCA 2010); *Henderson v. State*, 780 So. 2d 319, 320 (Fla. 4th DCA 2001). Remand to the Third District is necessary to resolve these outstanding issues.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/Jonathan Tanoos
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document – *Response to Order to Show Cause re: Jurisdiction* – has been delivered to Maria Lauredo, Esq., Office of the Public Defender, at mlauredo@pdmiami.com and appellatedefender@pdmiami.com by **e-mail** on **March 8, 2017**.

/s/Jonathan Tanoos

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