

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. SC19-2155

RIDGE GABRIEL,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
SUMMARY OF THE ARGUMENT.....	1
ARGUMENT.....	2
UNDER THE CRIMINAL PUNISHMENT CODE, THE LOWEST PERMISSIBLE SENTENCE IS AN INDIVIDUAL MINIMUM SENTENCE AND NOT A COLLECTIVE MINIMUM SENTENCE; THE TRIAL COURT THEREFORE PROPERLY IMPOSED SENTENCE.....	2
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	6
DESIGNATION OF EMAIL.....	6
CERTIFICATE OF COMPLIANCE.....	6

TABLE OF AUTHORITIES

Cases:

<u>Champagne v. State,</u>	
269 So. 3d 629 (Fla. 2d DCA 2019)	2
<u>English v. State,</u>	
191 So. 3d 448 (Fla. 2016)	2
<u>Gabriel v. State,</u>	
44 Fla. L. Weekly D2913 (Fla. 5th DCA Dec. 6, 2019)	3
<u>J.M. v. Gargett,</u>	
101 So. 3d 352 (Fla. 2012)	2
<u>Moore v. State,</u>	
882 So. 2d 977 (Fla. 2004)	2, 4
<u>State v. Peraza,</u>	
259 So. 3d 728 (Fla. 2018)	3

Statutes:

Chapter 98-204, Laws of Florida	3
§ 921.0024(2), Florida Statutes	1, 2

Other Authorities:

Fla. S. Comm. on Crim. Just., CS for SB 1522 (1998), Staff Analysis (Apr. 2, 1998)	3, 4
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SUMMARY OF THE ARGUMENT

The certified question should be answered in the affirmative. The plain language of section 921.0024(2), Florida Statutes, unambiguously indicates that the lowest permissible sentence is an individual minimum sentence and not a collective minimum sentence. Even if the statute was ambiguous, the canons of statutory construction effectuate the legislative intent supporting this interpretation. The trial court therefore lawfully imposed sentence.

ARGUMENT

UNDER THE CRIMINAL PUNISHMENT CODE,
THE LOWEST PERMISSIBLE SENTENCE IS
AN INDIVIDUAL MINIMUM SENTENCE AND
NOT A COLLECTIVE MINIMUM SENTENCE;
THE TRIAL COURT THEREFORE PROPERLY
IMPOSED SENTENCE.

Respondent argues that section 921.0024(2), Florida Statutes (2013), is ambiguous regarding whether the lowest permissible sentence ("LPS") must exceed the respective minimum sentence for each "additional offense" or the collective statutory maximum sentence for all charged offenses. Respondent further argues that the Criminal Punishment Code's ("CPC") legislative intent and legislative history, and the holding in Moore v. State, 882 So. 2d 977 (Fla. 2004), support that the LPS is a collective minimum sentence. The State respectfully disagrees with each assertion.

First, the State reasserts that the statute's plain language is clear and unambiguous. Statutory language is not unclear and ambiguous simply due to disagreement between appellate courts on its meaning. Cf. English v. State, 191 So. 3d 448, 450-51 (Fla. 2016) (holding that statutory language on review was clear and unambiguous despite conflict between district courts on language's meaning); J.M. v. Gargett, 101 So. 3d 352, 356-57 (Fla. 2012) (finding the Second District's interpretation of statute was "in accord with the clear language" in review of certified conflict). Notwithstanding the Second District in Champagne v. State, 269 So.

3d 629 (Fla. 2d DCA 2019), and the Fifth District in Gabriel v. State, 44 Fla. L. Weekly D2913 (Fla. 5th DCA Dec. 6, 2019), reaching conflicting conclusions regarding the LPS exception, this Honorable Court can still find that the statutory language at bar clearly and unambiguously means that the LPS is an individual minimum sentence. Because the plain language is clear and unambiguous, there is no need to resort to the secondary rules of statutory interpretation and construction. See State v. Peraza, 259 So. 3d 728, 732-33 (Fla. 2018). The State further relies on the arguments presented in the initial brief.

Next, regarding the legislative history in the event this Honorable Court finds the statute ambiguous, the State asserts the staff analysis of chapter 98-204, Laws of Florida, demonstrates that the legislature considered the lowest permissible sentence to be an individual minimum sentence. As mentioned in the answer brief, the following language appears near the beginning of the senate staff analysis:

The Criminal Punishment Code . . . essentially authorizes the discretion of the court to impose a sentence *for each crime that is committed*, which could be up to the statutory maximum *for each offense*. However, the punishment code establishes a "*floor*" or *minimum threshold sentence that is the minimum sentence that a court may impose for the offenses before the court*, absent a departure reason authorized by statute.

Fla. S. Comm. on Crim. Just., CS for SB 1522 (1998), Staff Analysis

(Apr. 2, 1998) (available at Fla. Dep't of State, Fla. State Archives, Tallahassee, Fla.) (emphasis added). In the "Effect of Proposed Changes" section, the analysis clarifies that "if the lowest permissible sentence under the code exceeds that statutory maximum sentence for the offenses committed, the sentence under the code must be imposed." This clarification is preceded by language that a scoresheet is prepared "for every felony defendant to determine the permissible range, which is the lowest permissible sentence up to the statutory maximums for the offenses committed." Id.

Respondent remarks that the clarifying language is "not the 'Rosetta Stone' of legislative intent." (AB 16-17). It is arguable that, converse to Respondent's assertion, the legislature intended to abandon the concept of "the sentencing range in a collective sense." The staff analysis remarks that a sentence is imposed "for each crime that is committed . . . up to the statutory maximum for each offense." It next describes the LPS as "the minimum sentence that a court may impose for the offenses before the court." It is reasonable that the legislature meant "each offense" when it referred to "offenses" in the aforementioned excerpts.

Finally, the State respectfully disagrees with Respondent that the holding in Moore v. State, 882 So. 2d 977 (Fla. 2004), implicitly acknowledges that the LPS is a collective minimum sentence. The State relies on the arguments presented in the

initial brief, but also readdresses its proposed hypothetical scenario. While Respondent argues that, under the State's position, a defendant facing a sixty-one-month LPS for two third degree felonies would fall victim to a "return to calculated justice," because the defendant faces either concurrent sixty-one-month sentences or a total sentence of one hundred twenty-two-months if imposed consecutively, this scenario is an exceptional circumstance geared towards defendants who require higher minimum sentences due to their scoresheet computation. These sentences would therefore be imposed as designed by the legislature, whose will the trial courts "are routinely under the obligation to follow" as discussed in the answer brief. (AB 20).

Moreover, the State proposes an alternative hypothetical scenario where a defendant scores the same sixty-one-month LPS, but instead faces ten third degree felonies, which would yield a maximum sentence of fifty years. The State's position is no longer restrictive as argued by Respondent. The sentencing court could impose a sixty-one-month sentence on all ten counts, or various consecutive combinations. If the sentencing court decided that the LPS was appropriate, but must impose it through piecemeal consecutive sentences as proposed by Respondent in this case, the court would come to absurd combinations such as (1) five years on nine counts, followed by one month on one count; (2) thirty-six months on half of the counts followed by twenty-five months on the

other half; or (3) numerous other possibilities. A sentencing court should not be required to calculate such absurdities if it determines in its discretion that concurrent sixty-one-month sentences would suffice.

CONCLUSION

Based on the arguments and authorities presented herein, Petitioner respectfully requests this Honorable Court quash the lower court's decision and remand with directions to affirm Respondent's sentence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Reply Brief of Petitioner has been furnished to counsel for Respondent, Assistant Public Defender Scott G. Hubbard, 444 Seabreeze Boulevard, Suite 210, Daytona Beach, Florida 32118, via the Florida Courts E-Filing Portal system at appellate.efile@pd7.org and hubbard.scott@pd7.org, this 20th day of August, 2020.

DESIGNATION OF EMAIL

I HEREBY DESIGNATE the following email addresses for purposes of service of all documents, pursuant to Rule 2.516, in this proceeding: crimappdab@myfloridalegal.com (primary) and richard.pallas@myfloridalegal.com (secondary).

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was typed in 12-point Courier

New as required by Rule 9.210(a)(2).

Respectfully submitted,

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