Case No.

IN THE SUPREME COURT OF THE UNITED STATES
October Term, *Anno Domini* 2021

ROGER C. CASSIDY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

APPENDICES TO PETITION FOR WRIT OF *CERTIORARI* VOLUME 1 OF 1

ROGER C. CASSIDY #978936
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, Florida 32124

Petitioner in proper person

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Appendix A
PCA and Mandate

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

ROGER C. CASSIDY,

Appellant,

v.

Case No. 5D22-914
LT Case No. 2001-CF-002666-A

STATE OF FLORIDA,

Appellee.

_____/

Decision filed May 24, 2022

3.800 Appeal from the Circuit Court
for Seminole County,
Melanie Chase, Judge.

Roger C. Cassidy, Daytona Beach,
pro se.

Ashley Moody, Attorney General,
Tallahassee, and Bonnie Jean Parrish,
Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED.

WALLIS, SASSO and WOZNIAK, JJ., concur.

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M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL OR BY PETITION, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION OR DECISION;

YOU ARE HEREBY COMMANDED THAT FURTHER PROCEEDINGS AS MAY BE REQUIRED BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE RULING OF THIS COURT AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE BRIAN D. LAMBERT, CHIEF JUDGE OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT, AND THE SEAL OF THE SAID COURT AT DAYTONA BEACH, FLORIDA ON THIS DAY.

DATE: June 17, 2022
FIFTH DCA CASE NO.: 5D 22-0914
CASE STYLE: ROGER C. CASSIDY v. STATE OF FLORIDA
COUNTY OF ORIGIN: Seminole
TRIAL COURT CASE NO.: 2001-CF-002666-A

I hereby certify that the foregoing is
(a true copy of) the original Court mandate.

Sandra B. Williams

SANDRA B. WILLIAMS, CLERK

Mandate and Opinion to: Clerk Seminole
cc: (without attached opinion)

Bonnie Jean Parrish | Office of the Attorney General | Roger C. Cassidy

Appendix E
March 21, 2022 Order

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

CASE NO. 01-2666CFA

vs.

ROGER CARLTON CASSIDY,
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

THIS CAUSE comes before the Court on Defendant's pro se "Motion to Correct Illegal Sentence," filed pursuant to Fla. R. Crim. P. 3.800(a) on March 11, 2022. Having reviewed the motion, the case file and the applicable law and upon due consideration, the Court finds as follows:

The record reflects that Defendant was convicted after a jury trial of robbery with a deadly weapon (Count 1) and tampering with physical evidence (Count 2). On March 5, 2002, Defendant was sentenced to life imprisonment with a minimum mandatory of life as a prison releasee reoffender (PRR) on Count 1, and five-years imprisonment on Count 2. The sentences were set to run concurrently. Defendant appealed and the Fifth District Court of Appeal affirmed. Cassidy v. State, 853 So. 2d 594 (Fla. 5th DCA 2003), review denied, 865 So. 2d 479 (Fla. 2004).

On June 26, 2009, Defendant filed a successive motion pursuant to Fla. R. Crim. P. 3.850 asserting, among other grounds, that the trial court lacked subject matter jurisdiction as to Count 2. By order rendered June 2, 2010, this Court vacated Defendant's conviction on Count 2. The Court corrected his judgment and sentence by deleting his sentence on Count 2 on November 7, 2012, nunc pro tunc to March 5, 2002.

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In **Claim 1**, Defendant asserts that his PRR sentence is illegal because the trial court found the facts necessary to establish he qualified as a prison releasee reoffender by a preponderance of the evidence instead of a jury making the finding beyond a reasonable doubt. Therefore, Defendant asserts that his PRR sentence is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000), and Alleyne v. United States, 570 U.S. 99 (2013). In support of his motion, Defendant relies upon the trial court ruling in State v. Ricky Tyrone Neal, No. 1999-CF-10077 (Fla. 9th Jud. Cir. Ct. Orange County, October 15, 2020. However, several District Courts of Appeal have held that Alleyne does not require a jury to make the PRR factual determination and that the PRR statute is not unconstitutional. Simmons v. State, 47 Fla. L. Weekly D315 (Fla. 5th DCA Jan. 28, 2022); Tobler v. State, 239 So. 3d 796 (Fla. 5th DCA 2018); Chapa v. State, 159 So. 3d 361 (Fla. 4th DCA 2015); Lopez v. State, 135 So. 3d 539, 540 (Fla. 2d DCA 2014); Williams v. State, 143 So. 3d 423, 424 (Fla. 1st DCA 2014). This Court is bound by the holdings of the District Courts of Appeal. Therefore, Defendant has failed to demonstrate an entitlement to relief as to **Claim 1**.

In **Claim 2**, Defendant asserts that while the trial court was required to impose the mandatory minimum term of life imprisonment as a PRR, the court retained discretion to suspend a portion of the incarcerative term and place Defendant on probation and had the trial court know it could have imposed such a sentence, the court would have.[1] "'To be illegal within the meaning of rule 3.800(a) the sentence must impose a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual

[1] While this Court has not found any caselaw addressing the legality of a suspended PRR life sentence, the caselaw is clear that the PRR statute "establishes a mandatory minimum sentence, a 'sentencing floor,'" and does not prevent "a court 'from imposing a greater sentence of incarceration as authorized by law.'" Nettles v. State, 850 So. 2d 487, 494 (Fla. 2003) (quoting § 775.082(9)(c)) (emphasis added). Furthermore, the express Legislative intent of the PRR statute was that those who qualify for PRR sentencing "be punished to the fullest extent of the law." Fla. Stat. § 775.082(9)(d)1. Therefore, Defendant's assertion that the trial court could have imposed a suspended sentence is questionable.

circumstances.'". Carter v. State, 786 So.2d 1173, 1178 (Fla. 2001) (quoting Blakley v. State, 746 So.2d 1182, 1186-87 (Fla. 4th DCA 1999)) (emphasis in original). "Rule 3.800 is intended to provide relief for a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law." Raley v. State, 675 So. 2d 170, 172-73 (Fla. 5th DCA 1996). "It is not a vehicle designed to re-examine whether the procedure employed to impose the punishment comported with statutory law and due process." Bover v. State, 797 So. 2d 1246, 1249 (Fla. 2001) (quoting Judge v. State, 596 So. 2d 73, 77 (Fla. 2d DCA 1991)). Defendant does not assert that the trial court imposed a punishment that no judge could have imposed under the entire body of sentencing law. Therefore, Defendant has failed to demonstrate an entitlement to relief as to **Claim 2**.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is DENIED.

Defendant may file a notice of appeal within thirty days of the date this order is rendered.

DONE AND ORDERED in chambers at Sanford, Seminole County, Florida, on Monday, March 21, 2022.

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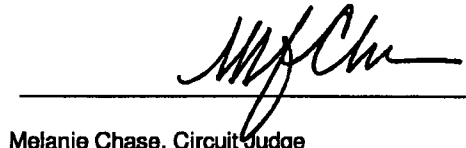

Melanie Chase, Circuit Judge
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Copies furnished on Monday, March 21, 2022 to:

Roger Cassidy, # 978936
Tomoka Correctional Institution
3950 Tiger Bay Rd.
Daytona Beach, FL 32124-1098

Office of the State Attorney
SemFelony@sa18.org

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Jennifer Jones

Jennifer Jones, Judicial Assistant
59-2001-CF-002666-A 03/21/2022 12:57:03 PM

Appendix G
Chapter *97-239, Laws of Florida*
(Overview/Summary of Committee Substitute for Committee Substitute for House Bill No. 1371)

CHAPTER 97-239
Committee Substitute for
Committee Substitute for House Bill No. 1371
An act relating to criminal justice; creating the "Prison Releasee Reoffender Punishment Act"; amending s. 775.082, F.S.; defining "prison releasee reoffender"; providing that certain reoffenders are ineligible for sentencing under the sentencing guidelines under specified circumstances when the reoffender has been released from correctional custody and, within 3 years of being released, commits treason, murder, manslaughter, sexual battery, carjacking, home-invasion robbery, robbery, arson, kidnapping, aggravated assault, aggravated battery, aggravated stalking, aircraft piracy, unlawful throwing, placing, or discharging of a destructive device or bomb, a felony involving the use or threat of physical force or violence against an individual, armed burglary, burglary of an occupied structure or dwelling, burglary when the person has two prior felony convictions, or a felony violation of s. 790.07, F.S., relating to having a weapon while engaged in a criminal offense, of s. 800.04, F.S., relating to lewd, lascivious, or indecent assault or act upon or in presence of child, of s. 827.03, F.S., relating to abuse, aggravated abuse, or neglect of child, or of s. 827.071, F.S., relating to sexual performance by a child; providing for such reoffender to be sentenced to specified mandatory minimum sentences; making such reoffender ineligible for parole, probation, or early release; providing legislative intent with respect to punishment in reoffender cases; amending s. 944.705, F.S., relating to the release orientation program; requiring notice to certain released offenders by the Department of Corrections with respect to the new minimum mandatory sentencing provisions; providing for inadmissibility of certain evidence regarding departmental failure to provide such notice; amending s. 947.141, F.S.; providing for mandatory forfeiture of previously granted early release credits under specified circumstances when conditional release, control release, or conditional medical release is revoked; amending s. 948.06, F.S.; permitting a law enforcement officer to arrest a probationer or offender in community control upon probable cause that the probationer or offender has materially violated probation or community control, under specified circumstances; providing for mandatory forfeiture of previously granted early release credits under specified circumstances when probation or community control is revoked; reenacting ss. 948.01(9) and (13)(b) and 958.14, F.S., to incorporate said amendment in references; providing an effective date.

WHEREAS, recent court decisions have mandated the early release of violent felony offenders, and

WHEREAS, the people of this state and the millions of people who visit our state deserve public safety and protection from violent felony offenders who have previously been sentenced to prison and who continue to prey on society by reoffending, and

WHEREAS, the Legislature finds that the best deterrent to prevent prison releasees from committing future crimes is to require that any releasee who commits new serious felonies must be sentenced to the maximum term of incarceration allowed by law, and must serve 100 percent of the court-imposed sentence, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Prison Releasee Reoffender Punishment Act."

Section 2. Section 775.082, Florida Statutes, is amended to read:

775.082 Penalties; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1) A person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(2) In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment as provided in subsection (1).

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed prior to October 1, 1983, by a term of imprisonment for life or for a term of years not less than 30.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. For a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

(b) For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

(c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;

(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

(5) Any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county.

(6) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment for an indeterminate period within minimum and maximum limits as provided by law, except as provided in subsection (1).

(7) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

(8)(a)1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:

a. Treason;

b. Murder;

c. Manslaughter;

d. Sexual battery;

e. Carjacking;

f. Home-invasion robbery;

g. Robbery;

h. Arson;

i. Kidnapping;

j. Aggravated assault;

k. Aggravated battery;

l. Aggravated stalking;

m. Aircraft piracy;

n. Unlawful throwing, placing, or discharging of a destructive device or bomb;

o. Any felony that involves the use or threat of physical force or violence against an individual;

p. Armed burglary;

q. Burglary of an occupied structure or dwelling; or

r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, or s. 827.071;

within 3 years of being released from a state correctional facility operated by the Department of Corrections or a private vendor.

2. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:

a. For a felony punishable by life, by a term of imprisonment for life;

b. For a felony of the first degree, by a term of imprisonment of 30 years;

c. For a felony of the second degree, by a term of imprisonment of 15 years; and

d. For a felony of the third degree, by a term of imprisonment of 5 years.

(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.

(c) Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084 or any other provision of law.

(d)1. It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless any of the following circumstances exist:

a. The prosecuting attorney does not have sufficient evidence to prove the highest charge available;

b. The testimony of a material witness cannot be obtained;

c. The victim does not want the offender to receive the mandatory prison sentence and provides a written statement to that effect; or

d. Other extenuating circumstances exist which preclude the just prosecution of the offender.

2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. On a quarterly basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this subsection, to the President of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such information, and make such information available to the public upon request, for at least a 10-year period.

(9)(8) The purpose of this section is to provide uniform punishment for those crimes made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

Section 3. Subsection (6) is added to section 944.705, Florida Statutes, to read:

944.705 Release orientation program.—

(6)(a) The department shall notify every inmate, in no less than 18-point type in the inmate's release documents, that the inmate may be sentenced pursuant to s. 775.082(8) if the inmate commits any felony offense described in s. 775.082(8) within 3 years after the inmate's release. This notice must be prefaced by the word "WARNING" in boldfaced type.

(b) Nothing in this section precludes the sentencing of a person pursuant to s. 775.082(8), nor shall evidence that the department failed to provide this notice prohibit a person from being sentenced pursuant to s. 775.082(8). The state shall not be required to demonstrate that a person received any notice from the department in order for the court to impose a sentence pursuant to s. 775.082(8).

Section 4. Subsection (6) of section 947.141, Florida Statutes, is amended to read:

947.141 Violations of conditional release, control release, or conditional medical release.—

(6) Whenever a conditional release, control release, or conditional medical release is revoked by a panel of no fewer than two commissioners and the releasee is ordered to be returned to prison, the releasee, by reason of the misconduct, shall may be deemed to have forfeited all gain-time or commutation of time for good conduct, as provided for by law, earned up to the date of release. However, if a conditional medical release is revoked due to the improved medical or physical condition of the releasee, the releasee shall not forfeit gain-time accrued before the date of conditional medical release. This subsection does not deprive the prisoner of the right to gain-time or commutation of time for good conduct, as provided by law, from the date of return to prison.

Section 5. Subsections (1) and (6) of section 948.06, Florida Statutes, are amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(1) Whenever within the period of probation or community control there are reasonable grounds to believe that a probationer or offender in community control has violated his probation or community control in a material respect, any law enforcement officer who is aware of the probationary or community control status of the probationer or offender in community control or any parole or probation supervisor may arrest or request any county or municipal law enforcement officer to arrest such probationer or offender without warrant wherever found and forthwith return him to the court granting such probation or community control. Any committing magistrate may issue a warrant, upon the facts being made known to him by affidavit of one having knowledge of such facts, for the arrest of the probationer or offender, returnable forthwith before the court granting such probation or community control. Any parole or probation supervisor, any officer authorized to serve criminal process, or any peace officer of this state is authorized to serve and execute such warrant. The court, upon the probationer or offender being brought before it, shall advise him of such charge of violation and, if such charge is admitted to be true, may forthwith revoke, modify, or continue the probation or community control or place the probationer into a community control program. If probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he has previously been adjudged guilty, and impose any sentence which it

might have originally imposed before placing the probationer on probation or the offender into community control. If such violation of probation or community control is not admitted by the probationer or offender, the court may commit him or release him with or without bail to await further hearing, or it may dismiss the charge of probation or community control violation. If such charge is not at that time admitted by the probationer or offender and if it is not dismissed, the court, as soon as may be practicable, shall give the probationer or offender an opportunity to be fully heard on his behalf in person or by counsel. After such hearing, the court may revoke, modify, or continue the probation or community control or place the probationer into community control. If such probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer or offender on probation or into community control.

(6) Any provision of law to the contrary notwithstanding, whenever probation, community control, or control release, including the probationary, community control portion of a split sentence, is violated and the probation or community control is revoked, the offender, by reason of his misconduct, shall may be deemed to have forfeited all gain-time or commutation of time for good conduct, as provided by law, earned up to the date of his release on probation, community control, or control release. This subsection does not deprive the prisoner of his right to gain-time or commutation of time for good conduct, as provided by law, from the date on which he is returned to prison. However, if a prisoner is sentenced to incarceration following termination from a drug punishment program imposed as a condition of probation, the sentence may include incarceration without the possibility of gain-time or early release for the period of time remaining in his treatment program placement term.

Section 6. For the purpose of incorporating the amendment to section 948.06, Florida Statutes, in references thereto, subsection (9) and paragraph (b) of subsection (13) of section 948.01, Florida Statutes, 1996 Supplement, and section 958.14, Florida Statutes, are reenacted to read:

948.01 When court may place defendant on probation or into community control.—

(9) Procedures governing violations of community control shall be the same as those described in s. 948.06 with respect to probation.

(13) If it appears to the court upon a hearing that the defendant is a chronic substance abuser whose criminal conduct is a violation of chapter 893, the court may either adjudge the defendant guilty or stay and withhold the adjudication of guilt; and, in either case, it may stay and withhold the imposition of sentence and place the defendant on drug offender probation.

(b) Offenders placed on drug offender probation are subject to revocation of probation as provided in s. 948.06.

958.14 Violation of probation or community control program.—A violation or alleged violation of probation or the terms of a community control program shall subject the youthful offender to the provisions of s. 948.06(1). However, no youthful offender shall be committed to the custody of the department for a substantive violation for a period longer than the maximum sentence for the offense for which he was found guilty, with credit for time served while incarcerated, or for a technical or nonsubstantive violation for a period longer than 6 years or for a period longer than the maximum sentence for the offense for which he was found guilty, whichever is less, with credit for time served while incarcerated.

Section 7. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.

Appendix H
Section 775.082(9), *Florida Statutes*

Florida Statutes 775.082
Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

(1) (a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in a determination that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(b) 1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(2) In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment as provided in subsection (1). No sentence of death shall be reduced as a result of a determination that a method of execution is held to be unconstitutional under the State Constitution or the Constitution of the United States.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a) 1. For a life felony committed before October 1, 1983, by a term of imprisonment for life or for a term of at least 30 years.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4. a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of at least 25 years imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the persons natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a persons second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

5. Notwithstanding subparagraphs 1.-4., a person who is convicted under s. 782.04 of an offense that was reclassified as a life felony which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

6. For a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g), by a term of imprisonment for life.

(b) 1. For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

2. Notwithstanding subparagraph 1., a person convicted under s. 782.04 of a first degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life, which was committed before the person attained 18 years of age may be punished by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(c) Notwithstanding paragraphs (a) and (b), a person convicted of an offense that is not included in s. 782.04 but that is an offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(d).

(d) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

(e) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;

(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

(5) Any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county.

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(6) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment for an indeterminate period within minimum and maximum limits as provided by law, except as provided in subsection (1).

(7) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

(8) (a) The sentencing guidelines that were effective October 1, 1983, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after October 1, 1983, and before January 1, 1994, and to all felonies, except capital felonies and life felonies, committed before October 1, 1983, when the defendant affirmatively selects to be sentenced pursuant to such provisions.

(b) The 1994 sentencing guidelines, that were effective January 1, 1994, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after January 1, 1994, and before October 1, 1995.

(c) The 1995 sentencing guidelines that were effective October 1, 1995, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after October 1, 1995, and before October 1, 1998.

(d) The Criminal Punishment Code applies to all felonies, except capital felonies, committed on or after October 1, 1998. Any revision to the Criminal Punishment Code applies to sentencing for all felonies, except capital felonies, committed on or after the effective date of the revision.

(e) Felonies, except capital felonies, with continuing dates of enterprise shall be sentenced under the sentencing guidelines or the Criminal Punishment Code in effect on the beginning date of the criminal activity.

(9) (a) 1. Prison releasee reoffender means any defendant who commits, or attempts to commit:

a. Treason;

b. Murder;

c. Manslaughter;

d. Sexual battery;

e. Carjacking;

f. Home-invasion robbery;

g. Robbery;

h. Arson;

i. Kidnapping;

j. Aggravated assault with a deadly weapon;

k. Aggravated battery;

l. Aggravated stalking;

m. Aircraft piracy;

n. Unlawful throwing, placing, or discharging of a destructive device or bomb;

o. Any felony that involves the use or threat of physical force or violence against an individual;

p. Armed burglary;

q. Burglary of a dwelling or burglary of an occupied structure; or

r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, s. 827.071, or s. 847.0135(5);

within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor, a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence, or a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

2. Prison releasee reoffender also means any defendant who commits or attempts to commit any offense listed in sub-subparagraphs (a)1.a.-r. while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

3. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:

a. For a felony punishable by life, by a term of imprisonment for life;

b. For a felony of the first degree, by a term of imprisonment of 30 years;

c. For a felony of the second degree, by a term of imprisonment of 15 years; and

d. For a felony of the third degree, by a term of imprisonment of 5 years.

(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.

(c) Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084 or any other provision of law.

(d) 1. It is the intent of the Legislature that offenders previously released from prison or a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.

2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.

(10) If a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony as defined in s. 776.08, and excluding any third degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.

(11) The purpose of this section is to provide uniform punishment for those crimes made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

HISTORY:
S. 3, ch. 71-136; ss. 1, 2, ch. 72-118; s. 2, ch. 72-724; s. 5, ch. 74-383; s. 1, ch. 77-174; s. 1, ch. 83-87; s. 1, ch. 94-228; s. 16, ch. 95-184; s. 4, ch. 95-294; s. 2, ch. 97-239; s. 2, ch. 98-3; s. 10, ch. 98-204; s. 2, ch. 99-188; s. 3, ch. 2000-246; s. 1, ch. 2001-239; s. 2, ch. 2002-70; ss. 1, 2, ch. 2002-211; s. 4, ch. 2005-28; s. 13, ch. 2008-172, eff. Oct. 1, 2008; s. 1, ch. 2008-182, eff. July 1, 2008; s. 1, ch. 2009-63, eff. July 1, 2009; s. 2, ch. 2011-200, eff. July 1, 2011; s. 8, ch. 2014-160, effective October 1, 2014; s. 1, ch. 2014-220, effective July 1, 2014; s. 1, ch. 2016-13, effective March 7, 2016; s. 19, ch. 2016-24, effective October 1, 2016; s. 3, ch. 2017-1, effective March 13, 2017; s. 21, ch. 2017-37, effective October 1, 2017; s. 11, ch. 2017-107, effective October 1, 2017; s. 30, ch. 2019-167, effective October 1, 2019.

Additional material from this filing is available in the Clerk's Office.