

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE, BE SEATED.

>> THE LAST CASE ON THE COURT'S
AGENDA FOR TODAY IS MENDENHALL
V. STATE.

ARE THE PARTIES READY?

>> YES, YOUR HONOR.

>> YOU MAY PROCEED.

>> MAY IT PLEASE THE COURT, I'M
MEGHAN COLLINS, I ASK TO RESERVE
FIVE MINUTES FOR REBUTTAL.

MR. MENDENHALL WAS SENTENCED
PURSUANT TO 35 YEARS IN PRISON
WITH A 35-YEAR MINIMUM SENTENCE.

ON 3800 MOTION THE TRIAL COURT
REVERSED THIS SENTENCE AND
RESENTENCED HIM TO 30 YEARS WITH
A 25-YEAR MINIMUM SENTENCE
FINDING THAT AS THE MAXIMUM
SENTENCE COMMITTED --

[INAUDIBLE]

DISCHARGE CAUSING GREAT BODILY
HARM OR DEATH.

THE STATE CROSS-APPEALED AND
REMANDED FOR THE IMPOSITION OF
THE ORIGINAL SENTENCE HOLDING
THAT THE MANDATORY PROVISIONS
INFLATE THE STATUTORY MAXIMUM
UNDER 775.082.

>> SO LET'S, THE FIRST THING
THAT HAPPENED IS, AS YOU SAY, HE
WAS FOUND GUILTY OF A
LESSER-INCLUDED OFFENSE OF
ATTEMPTED SECOND DEGREE MURDER
WITH A FIREARM, CORRECT?

>> YES, YOUR OHIOAN.

>> THAT WOULD HAVE BEEN A SECOND DEGREE FELONY THAT WOULD HAVE BEGIN HIM A 15-YEAR SENTENCE, IS THAT CORRECT?

SO THE FIRST PART THAT HAPPENED IS UNDER 10-20-LIFE IT WAS RECLASSIFIED FROM A SECOND DEGREE FELONY TO A FIRST DEGREE FELONY, AND YOU DO NOT TAKE ISSUE THAT WAS PERMISSIBLE.

SO HIS SENTENCE WHICH WOULD HAVE BEEN A MAXIMUM OF 15 IS UNDER, WITH 10-20-LIFE AND THE 787 PERIOD STATUTE GOES TO A FIRST-DEGREE FELONY?

>> YES.

>> ARE YOU SAYING, I MEAN, THE FIRST ARGUMENT WOULD BE THAT THOSE TWO STATUTES HAVE TO BE READ TOGETHER.

THAT IS, 10-20-LIFE PLUS THE -- I'M TRYING TO FIND THE STATUTE.

>> [INAUDIBLE]

>> RIGHT.

THAT THOSE HAVE TO BE READ TOGETHER.

>> YES, YOUR HONOR.

>> ARE YOU, YOU'RE AGREEING THAT AS IT AFFECTS THE MANDATORY MINIMUM THAT THE MANDATORY MINIMUM IN THE 10-20-LIFE HAVE TO CONTROL THE LOWER PART OF THE SENTENCE?

>> I WOULD ARGUE THAT THE MANDATORY MINIMUM IS SUBJECT TO

RESTRICTIONS BY THE MANDATORY
MAXIMUM.

>> SO THAT IN THIS CASE THE
MANDATORY MINIMUM, WHICH WOULD
NOT EXIST IF YOU JUST LOOK AT
775.087, IS 25 YEARS?

>> YES, YOUR HONOR.

>> OKAY.

NOW, ISN'T THE ARGUMENT, THOUGH,
THAT THE STATE IS MAKING AND
THAT THE FIFTH DISTRICT AGREED
TO IS THAT THE CLEAR LANGUAGE OF
087 REQUIRES THAT IF THE PERSON
UPON CONVICTION FOR DISCHARGE OF
A FIREARM SHALL BE SENTENCED TO
A MINIMUM TERM OF IMPRISON
AREMENT OF NOT LESS THAN 25
YEARS AND NOT MORE THAN A TERM
OF IMPRISONMENT OF LIFE, THAT
THAT MEANS THAT ANY FELONY WITH
A DISCHARGE OF A FIREARM COULD
BE SENTENCED TO A MAXIMUM OF
LIFE IN PRISON?

>> THAT IS THE POSITION THE
FIFTH IS TAKING NOW IN
MENDENHALL.

THAT WASN'T THEIR POSITION
ORIGINALLY IN THE YASIN AND
BROWN.

IN THOSE TWO CASES, THEY HELD
THAT THE MAXIMUM SENTENCE
RECEIVED WOULD BE 30 YEARS IN
PRISON.

I ARGUE THAT THE LEGISLATIVE
INTENT LIMITS THE MINIMUM UNDER
10-20-LIFE.

THE LEGISLATURE HAD SPECIFICALLY INCLUDED IN THE STATUTE 775.0872 TO ADDRESS POTENTIAL CONFLICTS WITH OTHER SENTENCING STATUTES TO EXPLICITLY RECOGNIZE THAT SENTENCES UNDER 10-20-LIFE ARE SUBJECT TO THE STATUTORY MAXIMUMS IN 775082 AND UNDER THE CRIMINAL PUNISHMENT CODE.

AND I WOULD ARGUE THAT CLEARLY THE LEGISLATURE INTENDED THAT THERE BE A LIMITATION ON THE MANDATORY MINIMUM SENTENCE AND DID NOT INTEND FOR THE MANDATORY MINIMUM SENTENCES TO INFLATE TO THE MAXIMUM OF LIFE FOR EVERY AFFECTED FELONY.

>> THEY COULD OTHERWISE HAVE SAID, I MEAN, IT WOULD BE VERY EASY FOR THEM TO HAVE SAID THAT WHICH IS IN THE EVENT OF ANY CONFLICT OF WHAT THE STATUTORY MAXIMUMS ARE UNDER 775082 AND THIS THAT THIS IS MEANT TO OVERRIDE ANY OTHER STATUTORY MAXIMUMS, IS THAT CORRECT?

>> THAT'S CLEAR --

>> JUST LIKE THEY DID FOR STATUTORY MINIMUMS.

>> RIGHT.

THAT IS WHAT THEY COULD HAVE DONE, AND THEY CHOSE NOT TO. IF A MANDATORY MINIMUM EXCEEDS THE SENTENCE AUTHORIZED UNDER THOSE THREE PROVISIONS, THEN THE

MANDATORY MINIMUM SENTENCE MUST BE IMPOSED.

I WOULD ARGUE --

>> SO HOW -- I UNDERSTAND WHAT THOSE STATUTES SAY.

MY PROBLEM IS THIS, THAT HOW DO WE KNOW WHAT THE MANDATORY MINIMUM IS IN THIS CASE BECAUSE IT IS A RANGE?

BECAUSE IT GOES FROM 25 YEARS TO LIFE, SO WHY ISN'T IT, WHY ISN'T IT APPROPRIATE TO SAY THAT IN THIS CASE YOU COULD HAVE A MANDATORY MINIMUM OF UP TO LIFE WITHOUT VIOLATING THESE PRINCIPLES EVEN THOUGH THE STATUTORY MAXIMUM IS 30 YEARS?

BECAUSE IF THE MANDATORY -- YOU WOULD AGREE THAT THE LEGISLATIVE INTENT IS THAT THE MANDATORY MINIMUM SHOULD APPLY IF IT IS THE GREATER OF THE TWO SENTENCES?

>> YES, YOUR HONOR.

>> OKAY.

AND SO WHY ISN'T THE GREATER OF THE TWO SENTENCES IN THIS SITUATION LIFE EVEN?

SO CERTAINLY 30 OR 35 YEARS WOULD BE IN THE RANGE BETWEEN 25 AND LIFE.

>> WELL, YOUR HONOR, WHEN THEY DRAFTED THE STATUTE, THEY SPECIFICALLY SAID IF THE MINIMUM MANDATORY EXCEEDS, THEN THE MANDATORY MINIMUM WOULD APPLY.

I ARGUE BY USING TWO DIFFERENT TERMS WITHIN THIS PROVISION THEY ARE DESCRIBING TWO DIFFERENT THINGS.

THE MINIMUM MANDATORY REFERS TO THE RANGE PERMISSIBLE, AND MANDATORY MINIMUM REFERS TO THE LEAST THAT MUST BE IMPOSED.

IT WAS CLEAR THAT THE LEGISLATURE INTENDS THAT THERE BE MANDATORY TIME SERVED, AND I WOULD ARGUE THAT THEIR INTENTION BY DRAFTING IT THIS WAY WAS THAT YOU SERVE 25 YEARS, THE MANDATORY MINIMUM, IF YOUR STATUTORY MAXIMUM IS LESS THAN THE RANGE OF YEARS.

>> IF -- WHAT IS, IN WHAT SITUATION WOULD IT BE THAT LIFE COULD BE IMPOSED WHERE IT COULDN'T BE, WELL, WOULDN'T THAT MAKE IT THE 25 TO LIFE HAVE NO EFFECT?

BECAUSE IN WHAT SITUATION, IF THE JUDGE ALREADY DIDN'T HAVE DISCRETION TO IMPOSE LIFE, THEN ISN'T THAT PROVISION MEANINGLESS?

>> I DON'T BELIEVE THE PROVISION IS MEANINGLESS, YES.

IF THE JUDGE DIDN'T ALREADY HAVE DISCRETION, HE COULD NOT IMPOSE LIFE.

HOWEVER, IT WAS GIVING THE JUDGES THE DISCRETION TO NOT GIVE A SENTENCE THAT WOULD BE

BASED ON HOW THE JUDGE VIEWS THE CASE IF THEY WERE GOING TO GIVE THE DEFENDANT LIFE AND ONLY A MANDATORY TERM OF LESS THAN A YEAR.

AT A MOMENT THAT WOULD HAVE NO EFFECT BECAUSE A LIFE SENTENCE IS LIFE, BUT IT WOULD BE A POSSIBILITY IN THE FUTURE THAT THE JUDGE COULD SHOW MERCY TOWARDS A DEFENDANT.

>> WELL, GIVE ME A SITUATION WHERE THE RANGE WOULD HAVE MEANING AS FAR AS THE JUDGE IMPOSING A HARSHER SENTENCE THAN THEY COULD HAVE OR THE JUDGE COULD HAVE UNDER THE PRESENT LAW.

>> WELL, IN COLLAZO THE DEFENDANT WAS CONVICTED OF THIRD DEGREE MURDER WHICH CANNOT BE RECLASSIFIED, SO HE ENDED UP WITH A SENTENCE OF 25 YEARS OF DOC TIME WITH A 25-YEAR MANDATORY MINIMUM BECAUSE HIS STATUTORY MAXIMUM WAS LESS THAN THE MINIMUM MANDATORY, SO THE MINIMUM MANDATORY WAS IMPOSED WHICH DOES HAVE THE EFFECT OF INCREASING UP TO THE POINT --

>> I'M ASKING, THOUGH, WHERE 25 YEARS TO LIFE WOULD HAVE EFFECT, UP TO LIFE.

>> I DON'T HAVE AN EXAMPLE OF THAT.

>> BECAUSE THERE ISN'T ONE,

RIGHT?

>> THERE IS NOT.

>> WELL, DOES THAT MEAN YOU JUST ARE KIND OF READING WORDS OUT OF THE STATUTE HERE?

>> I'M NOT SURE I UNDERSTAND THE QUESTION.

>> WELL, HELP ME UNDERSTAND WHAT THE LEGISLATURE MEANT WHEN IT SAID IN 775.087283 THE PROVISION THAT DEALS WITH CIRCUMSTANCES WHERE THERE HAS BEEN A DEATH OR GREAT BODILY HARM THAT THE TRIAL COURT SHALL SENTENCE THE PERSON OR THE PERSON CONVICTED SHALL BE SENTENCED TO A MINIMUM TERM OF PRISON, WHAT DOES THAT RANGE, WHAT'S THAT ABOUT? WHAT ARE THEY TRYING TO GET AT THERE?

>> I THINK THE RANGE WAS REFLECTING THE FACT THERE WOULD BE SEVERAL FELONIES THAT WOULD COME INTO PLAY, AND IT WAS TO GIVE THE JUDGE DISCRETION TO DEAL WITH THE SITUATION.

>> WELL, LET'S SEE.

FIRST DEGREE FELONY IS THE MAXIMUM SENTENCE ALWAYS 30 YEARS OR IS THERE ANY, ANY SCENARIO WHEN THE MAXIMUM SENTENCE FOR FIRST DEGREE FELONY IS MORE THAN 30 YEARS?

>> THERE IS FIRST DEGREE FELONY PUNISHABLE BY LIFE.

>> BUT THEN YOU ALREADY HAVE THE

LIFE, AND SO, YOU KNOW, ARE
THERE ANY -- I THOUGHT THERE
WERE SOME FELONIES WHERE THE
MAXIMUM SENTENCE WAS 40 YEARS?
NO?

YOU SEE WHERE WE'RE HAVING SOME
TROUBLE HERE IS YOU WOULD NEVER
GET UNDER 10-20-LIFE A LIFE
SENTENCE --

>> UNLESS YOU ALREADY --

[INAUDIBLE]

>> BECAUSE 25 YEARS WOULD ALWAYS
UNDER YOUR SCENARIO BE THE
MAXIMUM MANDATORY THAT THEY
COULD GET.

>> PROVIDED THAT THE RANGE WAS
NOT ENHANCED FOR UP TO 30 YEARS.
YES, YOUR HONOR, YOU'RE CORRECT.
THEY COULD NOT GET LIFE.

>> COULD THEY UNDER THIS
ORIGINAL SENTENCE THEY IMPOSED A
35-YEAR SENTENCE.

THE AMENDED SENTENCE WAS 30
YEARS, A MINIMUM OF 25.

IS THERE ANY REASON THE JUDGE
EVEN UNDER YOUR SCENARIO
COULDN'T HAVE IMPOSED A SENTENCE
OF 30 YEARS WITH A MANDATORY
MINIMUM OF 30 YEARS?

>> YOUR HONOR, THE CASE LAW
SUPPORTS THAT 25 YEARS IS THE
MAXIMUM HE COULD RECEIVE AS A
MINIMUM MANDATORY SENTENCE, BUT
I BELIEVE THAT THE STATUTES
COULD BE CONSTRUED TO SAY IT
WILL ACT AS A CAP AND THE

MINIMUM SENTENCE COULD BE 25 UP
TO THE --

>> YEAH.

THAT, TO ME, I SEE NO REASON
THAT IT COULDN'T AT LEAST CHANGE
SO THAT HE'S SERVING THE ENTIRE
SENTENCE OF 30 YEARS.

>> THAT'S A FAR LESS TORTURED
INTERPRETATION OF THE STATUTE,
YES, THAT HE COULD SERVE THE
RANGE FROM 25-30 AND THAT THE
MAXIMUM WOULD SIMPLY ACT AS A
CAP.

BUT I WOULD ARGUE THE
LEGISLATIVE INTENT WAS CLEAR
THAT THEY NEVER INTENDED --

>> WELL, IT'S NOT CLEAR.

THE QUESTION IS -- TO ME IT'S
NOT CLEAR.

I THINK WHEN 10-20-LIFE WAS
PROMOTED I WOULD HAVE THOUGHT,
AND I GUESS WE THOUGHT IT ENOUGH
IN THE CASE THAT IS SUGGESTED
THAT SOMEONE GOT LIFE, BUT I
THINK THERE'S, YOU KNOW, THE
BEST ARGUMENT YOU CAN MAKE IS
THERE'S AN AMBIGUITY BECAUSE AS
I SAID EARLIER, IT SEEMED LIKE
THERE WOULD HAVE BEEN AN EASY
WAY RATHER THAN REFERENCING
THESE ARE THE STATUTES TO SAY
THIS SCHEME TAKE PRECEDENT AND
OVERRIDES ANY STATUTORY MAXIMUM
IN 775.082 SERIES OF CRIMES.

CORRECT?

>> YES, THAT'S CLEAR.

>> AND THERE WOULD BE NO REASON THEY'D EVEN NEED TO RECLASSIFY THESE FROM FIRST DEGREE FROM SECOND TO FIRST BECAUSE YOU CAN IMPOSE UP TO LIFE ANYWAY.

>> YES.

IT'S CLEAR THAT IT'S THE LEGISLATURE'S INTENT TO INFLATE THE STATUTORY MAX, THEY COULD HAVE DONE IT VERY EASILY.

>> ISN'T THERE SOME LANGUAGE, YOU KNOW, SO MANY SENTENCING STATUTES THESE DAYS, I THOUGHT THERE WAS SOME LANGUAGE IN THESE STATUTES THAT TALK ABOUT THE LEGISLATIVE INTENT THAT YOU CAN GET THAT A PERSON SHOULD GET THE MAXIMUM THAT THEY COULD POSSIBLY GET.

>> WELL, THAT HAS BEEN SAID SEVERAL TIMES IN THE 10-20-LIFE ACT THAT THEY ARE INTENDING TO PUNISH DUE TO THE HARSH EXTENT OF THE LAW.

AT THE SAME TIME, THE LEGISLATURE CHOSE TO DRAFT THESE MINIMUM MANDATORY STATUTES AND THE WHEREAS CLAUSES SPECIFICALLY SAY THEY INTEND FOR MINIMUM MANDATORY SENTENCES TO BE IMPOSED.

THE LEGISLATURE ON ONE HAND IS SAYING THEY WANT HARSH PUNISHMENT, BUT THEN THEY ARE SAYING AND DEFINING TO MAKE A MINIMUM MANDATORY EXACTLY HOW

HARSH THESE PUNISHMENTS ARE TO BE WHICH IS WHY I WOULD ARGUE UNDER THE RULE THAT THE STATUTE SHOULD BE INTERPRETED SO THAT THE MAXIMUM SENTENCE FOR THE DEFENDANT IS 30 YEARS WITH A 25-30 MINIMUM MANDATORY SENTENCE.

>> SO YOUR ARGUMENT HINGES AT LEAST IN PART ON THE DISTINCTION BETWEEN MINIMUM MANDATORY AND MANDATORY MINIMUM.

>> THAT'S ONE ARGUMENT I'M RAISING, YOUR HONOR.

>> HELP ME UNDERSTAND, AGAIN, WHAT THAT DISTINCTION IS.

>> SINCE THE LEGISLATURE HAS CHOSEN TO USE TWO DIFFERENT TERMS WITHIN THE SAME SENTENCE TO GIVE MEANING TO THE LEGISLATURE'S INTENT, THE ARGUMENT IS THAT MINIMUM MANDATORY REFERS TO THE MINIMUM SENTENCE UNDER 10-20-LIFE WHICH IS NOT LESS THAN 25 YEARS AND NOT MORE THAN LIFE.

WHEN THEY LATER REFERRED TO THE MANDATORY MINIMUM SENTENCE BEING IMPOSED, I ARGUE THAT THAT MEANS THE LEAST SENTENCE THAT MUST BE IMPOSED.

THE MANDATORY SENTENCE WHICH WOULD HAVE BEEN 25 YEARS WHICH MUST AT LEAST BE IMPOSED UNDER THIS STATUTE.

HOWEVER, AS JUSTICE PARIENTE

POINTED OUT, A MORE REASONABLE INTERPRETATION OF THIS STATUTE -- 30 YEARS IS APPLIED AND THEN MANDATORY, MINIMUM MANDATORY SENTENCE IS THE RANGE FROM 25 TO 30.

>> WHAT YOU WOULD SAY UNDER C, IF THEY MEANT SOMETHING ELSE THEY SHOULD HAVE SAID, IF THE MINIMUM MANDATORY EXCEEDS THE MAXIMUM SENTENCES, THEN THE JUDGE HAS DISCRETION TO IMPOSE UP TO --

>> STATUTORY, UP TO LIFE.

>> UP TO LIFE.

THAT WOULD BE, RATHER THAN TALK ABOUT A MANDATORY MINIMUM WHICH IS ALWAYS SEEN AS THE FLOOR?

>> RIGHT.

BUT THEY CHOSE NOT TO DO SO.

THANK YOU.

NO FURTHER QUESTIONS.

>> THANK YOU.

>> GOOD MORNING.

I'M ASSISTANT ATTORNEY, MARY JOLLEY FROM DAYTONA BEACH REPRESENTING STATE OF FLORIDA.

LET'S DIRECT THIS COURT'S ATTENTION TO THE ACTUAL SENTENCING PROVISION HERE.

IT PROVIDES FOR A TERM WHEN YOU DISCHARGE A FIREARM AND CAUSE DEATH OR GRADE BODILY HARM IN 17 ENUMERATED OFFENSES, IN THOSE INSTANCES, THE LANGUAGE OF THE STATUTE IN SUBSECTION

C-3, THEY WILL BE SENTENCED TO
A MINIMUM TERM OF IMPRISONMENT
NOT LESS THAN 25 YEARS AND NOT
MORE THAN A TERM OF
IMPRISONMENT IN LIFE.

IT CREATES A SENTENCING RANGE.
AND THIS SENTENCING RANGE IS
BEING NULLIFIED BY THE ARGUMENT
THAT IT IS NOW CAPPED AT 30
YEARS.

THAT INTERPRETATION DEFIES THE
PLAIN LANGUAGE THAT PROVISION.

>> EXCEPT YOU GO TO C.

I WOULD BE WITH YOU IF WE
STOPPED THERE BUT I WAS
SURPRISED WHEN I READ THIS
SUBSECTION C TO LOOK AT WHAT
THE LANGUAGE WAS THAT THE
LEGISLATURE USED.

I MEAN IT WOULD HAVE BEEN SO
SIMPLE FOR THEM TO SAY, IT IS
THE INTENT, IF THE, THAT THE
COURT SHALL DISREGARD THE
MAXIMUM SENTENCES AUTHORIZED BY
775.082, 775.084 AND SHALL
SENTENCE BASED ON THE STATUTORY
MINIMUMS AND MAXIMUMS SET FORTH
IN THE STATUTE.

THEN YOU'D HAVE, THAT WOULD BE
THE END OF THE STORY BUT,
INSTEAD THEY USE THIS TERM THAT
IF, IF THE MINIMUM MANDATORY
SENTENCE IMPOSED EXCEEDS THE
MAXIMUM SENTENCE, THEN THE
MANDATORY MINIMUM MUST BE
IMPOSED.

NOW THAT CERTAINLY MEANS
THAT IN THE SITUATION, SAY THIS
HADN'T BEEN RECLASSIFIED, IT
WAS 15 YEARS, BUT THE MANDATORY
MINIMUM IS 25 YEARS, THEN YOU
WOULD IMPOSE THE 25-YEAR
SENTENCE.

NO ONE DISAGREES WITH THAT ONE,
RIGHT?

IF THE MAXIMUM IS LESS THAN THE
STATUTORY, THE STATUTORY
MAXIMUM IS LESS THAN THE
MANDATORY MINIMUM.

MY PROBLEM IS WHEN IT'S NOT
LESS, I DON'T SEE WHERE THIS
LEGISLATURE IS CLEARLY
AUTHORIZED THAT THE SENTENCING
IMPOSED BE ONE UP TO LIFE.

>> LET ME ANSWER THAT TWOFOLD.
I DISAGREE THAT THE MINIMUM
MANDATORY IS NOT 25 YEARS WHEN
YOU CAUSE DEATH AND GREAT
BODILY HARM AND DISCHARGE A
FIREARM IN THE ENUMERATED
FELONIES.

MINIMUM MANDATORY IS 25 YEAR
TO LIFE.

35-YEAR SENTENCE WITH MINIMUM
MANDATORY IS CLEAR UNDER
THE SENTENCING RANGE THEY
PROVIDED UNDER THESE UNIQUE
FACTUAL CIRCUMSTANCES WHICH THE
STATE HAS TO CHARGE AND PROVE.

I THINK WHEN I TRIED TO
EXPLAIN THIS IN MY PREVIOUS.
IT IS UNIQUE IN THE INSTANCE

WHERE THERE'S DISCHARGE, GREAT
BODILY HARM OR DEATH WHEN IT
BECOMES 25 TO LIFE.

WHEN YOU APPLY THAT PROVISION
IF THERE HAD BEEN NO GREAT
BODILY HARM AND DEFT DISCHARGED
THE FIREARM, IT WOULD BE A
20-YEAR MINIMUM MANDATORY
SENTENCE AND COULD GO UP TO 30
YEARS.

IT RECONCILES THERE.

IT ALSO RECONCILES HAD HE JUST
POSSESSED.

I THINK UNIQUENESS COMES ONLY
IN THESE CIRCUMSTANCES.

BUT THE PLAIN LANGUAGE PROVIDES
FOR A TERM IT IS UNIQUE AREA
TRIAL JUDGE IS GIVING BACK
DISCRETION TO WORK WITHIN THE
SENTENCE GIVEN THE 25 TO LIFE
TERM --

>> USING THAT TERM THE
MANDATORY MINIMUM SENTENCE MUST
BE IMPOSED.

>> UH-HUH.

>> IF, THAT SUGGESTS ONE
NUMBER.

YOU SAY IT WORKS WELL IN THE
TWO OTHER SUBSECTIONS.

THERE'S A, TO ME, A,
QUESTIONABLE APPLICATION WHEN
IT IS A RANGE.

I MEAN, AGAIN, WHETHER THE
LEGISLATURE INTENDED OR NOT IT
SEEMS LIKE IT WOULD BE SUCH AN
EASY FIX FOR THEM TO FIX THIS

AND SAY THIS OVERRIDES THE
STATUTORY MAXIMUMS IN THESE
OTHER PROVISIONS.

>> I THINK, IF YOU LOOK AT
SUBSECTION D, I THINK
LEGISLATIVE INTENT IS CLEAR
WE'LL PUNISH TO THE FULLEST
EXTENT OF LAW.

THIS COURT IN McDONALD'S DID A
REALLY NICE JOB OF
DEMONSTRATING HOW THIS IS VERY
SPECIFIC SENTENCING PROVISION
OVER THE MORE GENERAL
PROVISIONS RELATING TO PRR BUT
I WOULD SUBMIT TO THE COURT,
AND AGAIN A MORE GENERAL
SENTENCING PROVISION UNDER
775.0082 EXCUSE ME WHICH
CLASSIFIES THOSE OFFENSES.
THIS IS SPECIFIC SENTENCING
SCHEME THAT DOMINATES OVER THE
MORE GENERAL PROVISION.
I THINK, WHEN YOU HAVE, LOOK,
THIS IS THE PLAIN LANGUAGE.
WE WANT 25 YEARS AS MINIMUM
MANDATORY UP TO AND INCLUDING
LIFE FOR THESE INSTANCES, THESE
MOST VIOLENT CRIMES WHERE DEATH
OR GREAT BODILY HARM ENSUE.
AND THEN, WITH THE INTENT OF
THE LEGISLATURE, WHICH HAS BEEN
OVERWHELMING, THE PREAMBLE
CLAUSE, NOT SEEN MANY THAT HAVE
MUCH INTENT THAT GUN WIELDING
PEOPLE THAT, USE THESE GUNS AND
COMMIT THESE SERIOUS CRIMES ARE

SUBJECT TO 25 TO LIFE.

IF YOU READ THEM IN CONJUNCTION WITH SUBSECTION D, I THINK THE UNAMBIGUOUS CONSTRUCTION IS THAT IT'S A MINIMUM TERM OF 25 YEARS THAT CAN GO UP TO A MINIMUM TERM OF LIFE.

IF NOT, YOU CONSTRUE IT OTHERWISE WOULD NULLIFY THE PROVISION WHERE STATE LEGISLATURE INTENT IS CLEAR. IT IS SPECIFIC SENTENCING SCHEME.

I URGE THE COURT TO LOOK AT ANALYSIS THAT SPECIFIC VERSUS GENERAL WE DID IN McDONALD WHEN WE LOOKED AT IT IN COMPARISON TO THE PRR STATUTE.

AND SAID IT WAS MORE SPECIFIC TO THAT BECAUSE IT PRESENTS A UNIQUE SENTENCING SCHEME FOR UNIQUE SERIOUS CRIMES.

SO WE HAVE THE PLAIN LANGUAGE OF THE 25 TO LIFE AS MINIMUM MANDATORY UNDER THESE INSTANCES AND PROVIDED LEGISLATIVE INTENT.

YOU HAVE, I LOOKED AT THESE SENTENCING SCHEMES.

THIS HAS A SPECIFIC SUBSECTION PROVIDING WHAT INTENT WOULD BE AND I THINK FIFTH DISTRICT COURT OF APPEAL COMFORTABLE WITH THAT APPLIED PLAIN LANGUAGE AND RULED CORRECTLY. THE DCA CONSTRUCTION TO LIMIT

IT TO 25 MINIMUM MANDATORY IS
ILLOGICAL WHEN YOU READ THE
PLAIN LANGUAGE OF THE STATUTE.

>> I GUESS IN SOME SENSE IT IS
LOGICAL BECAUSE WE GET INTO
THIS, OH, DOUBLE ENHANCEMENT IN
THIS STATUTE BECAUSE YOU'RE NOT
ONLY HAVE ALREADY RECLASSIFIED
IT FROM, HE WAS CONVICTED OF
SECOND-DEGREE FELONY --

>> ATTEMPTED SECOND DEGREE.

>> NOW HE IS ACTUALLY CONVICTED
OF A FIRST-DEGREE FELONY AND ON
TOP THAT YOU'RE GOING TO ADD
IN, YOU KNOW, THIS OTHER SO I
COULD SEE THE LOGIC IN WANTING
TO IN THE APPELLATE ARGUMENT.

>> I UNDERSTAND THAT CONCERN,
JUSTICE QUINCE, BUT I DO THINK
THAT THIS IS A SPECIFIC,
SPECIFIC SENTENCING PROVISION
THAT NARROW ITSELF TO THESE
LIMITED FACTS.

IT IS NOT JUST YOU CAN GET
LIFE.

ALL THESE THINGS HAVE TO FALL
INTO PLACE.

THE PROSECUTOR CHARGED IT
PROPERLY HERE.

THERE ARE SPECIAL VERDICT
FORMS.

THEN AT THAT JUNCTURE IT
SPRINGS IT. IT IS NOT
NULLIFYING OR RECLASSIFICATION
PROCEDURE UNDER SUBSECTION A.
CREATING MORE PARTICULAR

SENTENCING SCHEME FOR THESE
OFFENSES.

THAT ERODES MY CONCERN.

IT MAY NOT ERODE YOURS.

WE HAVE TO LOOK AT IN TERMS

MATERIALS OF WHAT THE

LEGISLATION IS ABOUT.

I REMEMBER IT.

I REMEMBER THE COMMERCIALS AND

POSTERS AND BUMPER STICKERS,

10-20-LIFE AND THE LEGISLATIVE

INTENT AND IT IS A SPECIFIC

SENTENCING SCHEME THAT APPLIES

IN THESE MOST VIOLENT, NARROW

CRIMES.

>> WHAT GUIDES THE DISCRETION

OF THE JUDGE IF THE JUDGE,

AGAIN, AND I THINK THE

APPELLANT CONCEDED THAT,

MANDATORY MINIMUM COULD BE 30

YEARS, YOU KNOW, NOT 25 YEARS.

I THINK THAT IS CLEARLY

CONTEMPLATED NOT IN CONFLICT.

WHAT GUIDES THEN WHETHER HER

WHO OR SOMEBODY WHO IS, FOUND

GUILTY OF A LESSER OFFENSE OF

ATTEMPTED SECOND-DEGREE MURDER

WILL GET LIFE IN PRISON BY THE

TRIAL JUDGE?

I ASSUME THAT THE JUDGE COULD

SAY, WITH A MANDATORY MINIMUM

OF 75 YEARS?

WHAT ELSE COMES INTO PLAY IN

WHAT THAT JUDGE, HOW THAT JUDGE

DECIDES BETWEEN WHETHER THEY'RE

GOING TO GIVE 25 YEARS BECAUSE

THEY COULD STILL DO THAT OR
THEY'RE GOING TO GIVE LIFE?

>> AGAIN, I THINK JUSTICE
PARIENTE, UNIQUENESS GIVES THE
SENTENCING JUDGE BASED UPON
FACT OF THIS CASE.

>> THAT IS PRETTY BIG RANGE
THAT IS ESSENTIALLY, LET'S
ASSUME 25 YEARS UP TO LIFE WITH
NOTHING -- FOR THE DISCHARGE OF
THE FIREARM.

AGAIN WHEN I READ THOSE
POSTERS, I ASSUMED IT WAS A
MANDATORY LIFE IF YOU
DISCHARGED A FIREARM.

AND YOU'RE AGREEING THAT THE
JUDGE IS ONE THAT HAS DISCRETION
WHERE FROM 25 YEARS UP TO LIFE
IT WOULD GO?

>> MY, YES THEY DO.

IT'S A DISCHARGE AFTER FIREARM
CAUSING DEATH OR GREAT BODILY
HARM.

THIS MAN WAS SHOT TWICE IN THE
ABDOMEN AND COULD HAVE DIED.

>> BUT JURY FOUND HIM GUILTY
WHAT WOULD BE CLASSIFIED AS
SECOND-DEGREE FELONY, WHICH
UNDER THE LAWS OF THIS STATE
WOULD HAVE GIVEN HIM A MAXIMUM
OF 15 YEARS.

WE HAVEN'T LOOKED AT UNDERLYING
FACTS TO UNDERSTAND HOW
HORRIBLE THE FACTS WERE BUT THE
JURY SOMEHOW DIDN'T THINK IT
WAS AS HORRIBLE.

WHAT WE'RE NOT REALLY TALKING ABOUT HOW BAD THE CRIME IS BUT WHETHER THERE IS ANY RESTRICTION ON THE JUDGE'S SENTENCING UP TO LIFE WHEN THERE'S A STATUTORY MAXIMUM OF 30 YEARS?

>> THE LEGISLATURE INTENDED FOR IT TO BE THIS WAY BASED UPON THE ENACTMENT OF THIS STATUTE.

>> THAT IS REALLY, IF IT WERE CLEAR, I DON'T KNOW THERE WOULD BE A CONFLICT AND I WOULDN'T BE ASKING QUESTIONS.

YOU LOOK AT ME IN THIS AMUSED WAY IF THERE IS NO WAY TO READ THIS STATUTE IN TWO DIFFERENT POSSIBLE WAYS.

AND I'M IN GOOD CONSCIENCE TELLING YOU I READ THAT NEXT SUBSECTION AND I GET CONFUSED AS TO WHAT THE MEANING OF IT IS.

>> I APOLOGIZEM, YOUR HONOR. BEMUSEMENT ASIDE, OUR POSITION IS THAT, IF IT IS CONSTRUED IN THE WAY PETITIONER PERCEIVES IT TO BE, THEN CAN NEVER BE A LIFE SENTENCE FOR FIRST-DEGREE FELONY.

IT'S A 25 TO LIFE PROVISION UNDER THAT SPECIFIC PROVISION THAT PROVIDES FOR IT.

I THINK THAT CONSTRUCTION IS ILLOGICAL BASED UPON THE PLAIN LANGUAGE OF THE SEPARATE

SUBSECTIONS IN THIS STATUTE.

AND THAT'S OUR POSITION.

THAT IT'S NOT CAPPED AT 30
YEARS.

>> WOULDN'T IT BE JUST SO EASY
IF THE LEGISLATURE TOOK 775.082
AND SAID THAT, THE STATUTORY
MAXIMUM OF IS 30 YEARS.
HOWEVER, IF A DEFENDANT DISCHARGES
A FIREARM, AND CAUSES GREAT
BODILY HARM, THE STATUTORY
MAXIMUM CAN BE LIFE IN PRISON?
WOULDN'T THAT JUST SOLVE THE
PROBLEM?

>> ARGUABLY, IT IS OUR POSITION
THE WAY STATUTE IS WRITTEN IT
PROVIDES FOR 25 TO LIFE WITHIN
THAT RANGE WHEN THESE INSTANCES
OCCUR.

>> BUT, YOU KNOW, WE'VE BEEN
TALKING IN TERMS OF, YOU KNOW,
IF YOU READ IT THE WAY THE
APPELLANT SAYS YOU WOULD RULE
OUT THE POSSIBILITY OF A LIFE
SENTENCE. BUT THAT'S LIFE MANDATORY
MINIMUM.

>> CORRECT.

>> THAT'S NOT NECESSARILY TRUE
BECAUSE IF YOU'RE CONVICTED OF
A FIRST-DEGREE FELONY UNDER
THIS STATUTE CAN'T YOU ENHANCE
THAT TO A LIFE FELONY?
AND THEN OF COURSE YOU COULD
CERTAINLY, IT SEEMS TO ME
IMPOSE THE MANDATORY LIFE
SENTENCE.

IS THAT A PART OF THIS STATUTE
TOO?

THAT YOU CAN ENHANCE FROM A
FIRST-DEGREE FELONY TO LIFE
FELONY.

>> FOR USE OF, YEAH, IN
SUBSECTION ONE.

>> OKAY.

>> OUR POSITION WHEN YOU READ
ONE AND TWO, THAT SUBSECTION
TWO IS THE MORE SPECIFIC
PROVISION.

>> BUT I'M, SIMPLY SAYING IF
YOU WERE CONVICTED, IF THE DEFT
IS CONVICTED OF A FIRST-DEGREE
FELONY.

>> OKAY.

>> THEN WE TURN TO 775.087.
WE ENHANCE THAT TO A LIFE FELONY.

>> OKAY.

CERTAINLY UNDER THOSE
CIRCUMSTANCES THE COURT COULD
PROPERLY GIVE THE DEFENDANT,
ASSUMING IT IS SOME KIND OF
DISCHARGE AFTER FIREARM WITH
SERIOUS BODILY INJURY, COULD
GIVE THE DEFT A MANDATORY
MINIMUM LIFE SENTENCE.

HE COULD MAKE THAT LIFE
SENTENCE A MINIMUM OF LIFE.

ISN'T THAT CORRECT?

>> I BELIEVE SO.

>> OKAY.

>> I DO THINK THOUGH THAT THE
SPECIFIC CONTROLS OVER THE
GENERAL.

THIS IS A GENERAL SUBSECTION
ONE HAS BEEN THERE FOR A LONG
TIME.

THEN THEY CREATED SUBSECTION
TWO TO CREATE A MORE SPECIFIC
SCHEME.

>> WHETHER GENERAL OR NOT,
UNDER THOSE CIRCUMSTANCES COULD
YOU IN FACT IMPOSE A MINIMUM
LIFE SENTENCE?

>> YES YOU COULD.

>> OKAY.

>> BUT THE 10-20-LIFE, THE MORE
SPECIFIC SENTENCING PROVISION
WOULD APPLY THERE BECAUSE IT
MEETS ALL PARAMETERS OF THAT
SPECIFIC SENTENCING SCHEME.

>> I'M REALLY JUST TRYING TO
SEE IF THERE IS ANY ROOM FOR
OPERATION OF THE 25 TO LIFE.
SO THE TO LIFE CAN IN FACT BE
IMPOSED IF YOU HAVE ENHANCED
THE SENTENCE, THE CRIME TO A
LIFE FELONY?

>> CORRECT.

>> OKAY.

>> BUT REITERATE OUR POSITION
WITH THAT SECOND SUBSECTION
PROVIDED YOU MEET YOU HAVE
ENUMERATED FELONY THAT THE
10-20-LIFE THE TRIAL JUDGE
WOULD HAVE TO APPLY THAT.

>> I UNDERSTAND.

I'M JUST TRYING TO GET IT
STRAIGHT IN MY MIND IF THERE IS
STILL ANY ROOM FOR OPERATION

FOR THAT ENHANCEMENT TO A
MANDATORY MINIMUM LIFE.

>> OKAY.

I JUST WANT TO REITERATE, I
THINK THAT THE FIFTH DCA LOOKED
AT THE STATUTE IN ITS ENTIRETY
CORRECTLY AND APPLIED THE
CORRECT RANGE

CAPPING AT 30 YEARS IT ERODES
STATED INTENT OF THE STATUTE.

I THINK LANGUAGE IS PLAIN AND
LEGISLATIVE INTENT WITH A
SPECIFIC SUBSECTION D IN IT
PROVIDING FOR IT DEMONSTRATES
WHAT THE LEGISLATURE IS, THAT
INTENDS FOR A THESE SPECIFIC
OFFENSES UNDER THESE SPECIFIC
TYPE OF FACTS THAT.

THEY BE PUNISHED TO FULLEST
EXTENT OF LAW.

THERE IS NO INTENTION ON THAT
PHRASE WHICH IS IN THE STATUTE
THAT IT BE CAPPED AT 30 YEARS.

IT IS A 10-20-LIFE PROVISION.

OUR POSITION IS THAT THE
LANGUAGE IS CLEAR.

>> THEY SAY, AFTER THEY SAY THE
FULLEST EXTENT OF THE LAW AND
MINIMUM TERM OF IMPRISONMENT
IMPOSED SHALL BE IMPOSED.

THEY SAY THAT IN CONJUNCTIVE.

THAT'S WHY I KEEP ON GOING BACK
TO THE, THAT THE ISSUE IS, THAT
THEY CLEARLY INTENDED THERE TO
BE HARSHER MANDATORY MINIMUMS.

>> CORRECT.

>> ONLY REALLY TALKING ABOUT WHETHER THE STATUTORY MAXIMUM IS OF AN INDIVIDUAL STATUTE IS TRUMPED BY THE 10-20-LIFE AND THAT'S WHERE I STILL HAVE SOME QUESTIONS BECAUSE THEY CERTAINLY WOULD KNOW TO SAY, TO BE PUNISHED TO THE FULLEST, TENT OF THE LAW AND THAT THE MINIMUM TERMS OF IMPRISONMENT AND STATUTORY MAXIMUM BE GOVERNED BY THIS STATUTE.

THAT'S, AGAIN, ANOTHER WAY THEY COULD HAVE DONE IT.

THEY'RE REFERING TO MANDATORY MINIMUM IS A TERM THAT WE ALL UNDERSTAND REFERS TO THE MINIMUM SENTENCE.

AND YOU'VE I THINK AGREED THAT THE JUDGE DOESN'T HAVE TO IMPOSE A MANDATORY MINIMUM OF LIFE EVEN FOR DISCHARGE OF A FIREARM, CORRECT?

>> WELL AND FOR SERIOUS BODILY INJURY.

>> THEY'RE NOT COMPELLED TO IMPOSE A MANDATORY MINIMUM OF LIFE?

>> NO. IT IS A 25-YEAR, HE HAS TO IMPOSE A 25-YEAR MINIMUM MANDATORY.

>> AT LEAST.

>> AT LEAST.

BUT THE RANGE IS UP TO LIFE.

WE ASK THIS COURT TO LOOK AT THE FIFTH DCA'S ANALYSIS WHERE

THEY WENT THROUGH THE STATUTE AS OPPOSED TO THE CASES IN CONFLICT WHERE THERE IS VERY LITTLE RATIONALE TO THE CONCLUSION IN WILSON, SOUZA, AND COLLAZZO.

I THINK THE 5th DID THE CORRECT ANALYSIS UNDER THE STATUTE WHEN YOU CONSIDER THE BASES FOR WHICH THE STATUTE WAS ENACTED WHICH THIS COURT DID A NICE JOB, NICE JOB, DID LOOK AT IN McDONALD.

I THINK McDONALD ELUCIDATES THIS NOTION OF SPECIFIC OVER GENERAL WHEN READ IN CONJUNCTION WITH THE LEGISLATIVE INTENT OF THIS STATUTE AND IT IS OUR POSITION IN GRANTING, REVERSING ORDER GRANTING RULE 30.110 B.

THE 30-YEAR SENTENCE UNLAWFUL OF 10-20-LIFE PROVISION AND THE APPEAL SHOULD BE APPROVED BY THIS COURT.

UNLESS THE COURT HAS ANY FURTHER QUESTIONS I THANK YOU.

>> THANK YOU.

ANY REBUTTAL, MISS COLLINS?

>> THE RESPONDENT HAS ARGUED THIS WAS MORE SPECIFIC AND UNIQUE SCHEME.

LEGISLATURE THEMSELVES HAVE INCLUDED WITHIN THIS TEXT OF THIS STATUTE 77, REFERENCE TO 775.082.

HAD THEY INTENDED TO BE THIS

COMPLETELY SEPARATE SENTENCING
SCREAM THEY COULD HAVE LEFT OUT
ANY REFERENCE TO THE OTHER
STATUTORY MAXIMUM.

ALSO --

>> BUT EVEN THERE, IN THE, WE
WERE TALKING ABOUT THE FELONIES
OF THE FIRST DEGREE, THAT
STATUTE RECOGNIZES THAT THERE
ARE CIRCUMSTANCES WHERE A TERM
OF LIFE IMPRISONMENT MAY BE
IMPOSED FOR THE FIRST-DEGREE
FELONY WHEN SPECIFICALLY
PROVIDED BY STATUTE.

SO ARGUABLY, MAYBE MORE THAN
ARGUABLY, MAYBE CLEARLY, THIS
STATUTE IS ONE SUCH
CIRCUMSTANCE WHERE THERE'S A
SPECIFIC STATUTORY
AUTHORIZATION FOR THE LIFE
SENTENCE THAT IS GIVEN, MAYBE
GIVEN IN THE DISCRETION OF THE
TRIAL COURT.

>> I WOULD ARGUE THAT THE
SECTION 2-C HOWEVER IS LIMITING
ON THE MINIMUM SENTENCES.
AND THAT'S WHERE THE STATUTE IS
AMBIGUOUS.

ALSO THE DECISIONS FROM SOUZA
AND YASIN HOLDING THERE ARE
STATUTORY MAXIMUMS THAT ARE
MANDATORY, MINIMUMS ARE SUBJECT
TO THE STATUTORY MAXIMUMS HAVE
BEEN OUT SINCE 2005.

HAD THE LEGISLATURE WISHED TO
CORRECT THIS INTERPRETATION OF

THE STATUTE THEY HAVE HAD FULL
OPPORTUNITY TO DO SO.

>> THEY HAVE BEEN BUSY.

>> IF THERE IS NO FURTHER
QUESTIONS I ASK YOU REVERSE THE
FIFTH DISTRICT COURT.

>> THANK YOU BOTH FOR YOUR
ARGUMENTS.

THE COURT WILL NOT BE IN RECESS
UNTIL TOMORROW MORNING.

>> PLEASE RISE.

SUPREME COURT IS NOW ADJOURNED.