

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION, YOU SHALL
BE HEARD.
GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA, THIS
HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING, EVERYONE.
WELCOME TO THE FLORIDA SUPREME
COURT.
THE FIRST CASE ON THE CALENDAR
TODAY IS HATTEN VERSUS STATE.
COUNSEL, WHENEVER YOU'RE READY.
>> MAY IT PLEASE THE COURT, I AM
MELISSA FORD, COUNSEL FOR
PETITIONER, CORTEZ HATTEN, AND
WE'RE BEFORE THE COURT TODAY ON
REVIEW OF A DECISION OF THE
FIRST DISTRICT COURT OF APPEALS
WHICH AFFIRMED MR. HATTEN'S
40-YEAR SENTENCE WITH A 25-YEAR
MANDATORY MINIMUM IMPOSED UNDER
10-20-LIFE STATUTE.
THIS IS FOR ATTEMPTED
SECOND-DEGREE MURDER, WHICH WAS
A FIRST-DEGREE FELONY.
WE CONTEND THAT THIS IS AN
ILLEGAL SENTENCE BECAUSE THE
TOTAL SENTENCE EXCEEDS THE
STATUTORY MAXIMUM OF 30 YEARS.
>> NOW, IF HE -- IF THE JUDGE
HAD SENTENCED MR. HATTEN UNDER
THE 10-20-LIFE, WHAT WAS THE
MAXIMUM MANDATORY MINIMUM THE
JUDGE COULD HAVE GIVEN?
>> AT THE TIME THE JUDGE IMPOSED
THE SENTENCE, THE JUDGE, AS THIS
COURT HELD IN MENDENHALL, HAD
THE DISCRETION TO IMPOSE A
MANDATORY MINIMUM IN THE RANGE
OF 25 YEARS UP TO LIFE.
>> SO NOW -- AND THIS IS THE
CRAZINESS OF THIS STATUTE.
A JUDGE WHO MAY WANT TO GIVE A

DEFENDANT SOME ABILITY TO NOT SERVE DAY FOR DAY, BUT WANTS TO GIVE MORE THAN THE STATUTORY MAXIMUM FOR THE CRIME DOESN'T HAVE THE DISCRETION.

BECAUSE IF THIS JUDGE HAD WANTED TO GIVE A 40-YEAR SENTENCE UNDER THE 10-20-LIFE, HE WOULD HAVE HAD TO SERVE DAY FOR DAY 40 YEARS?

>> CORRECT.

>> BUT HE COULD HAVE DONE THAT.

>> YES.

THE TRIAL COURT IN THIS CASE --

>> IS THAT CRAZY?

I MEAN, IT SEEMS THAT THE LEGISLATURE IN DOING THIS, THE INTENTION WOULD HAVE BEEN -- AND I REALIZE LEGALLY MAYBE YOU'RE RIGHT, BUT IT SEEMS LIKE -- SO YOU'RE SAYING WE'D HAVE TO REDUCE THIS TO 30 YEARS WITH A 25-YEAR MANDATORY MINIMUM.

>> CORRECT.

THE REASON THAT THE JUDGE HAS -- THE REASON THAT THE JUDGE HAS THE DISCRETION TO IMPOSE A MANDATORY MINIMUM, THIS IS THE ONLY SUBSECTION WHERE THERE'S A RANGE, WHICH IS CLEARLY WHY THIS HAS CAUSED CONFUSION.

HOWEVER, THE 10-20-LIFE MANDATORY MINIMUMS, AS STATED IN THE LEGISLATIVE INTENT, THE STATUTES ARE MEANT TO DEAL WITH MANDATORY MINIMUMS.

THEY DON'T DEAL WITH MAXIMUMS. SO IT'S A SPECIFIC SENTENCING STATUTE THAT SERVES AS AN EXCEPTION TO THE GENERAL.

SO THE CRIMINAL PUNISHMENT CODE REQUIRES -- PROVIDES THAT THE JUDGE CAN SENTENCE UP TO AND INCLUDING THE STATUTORY MAXIMUM. SO THAT'S WHERE WE START.

WHERE WE START IS THAT WE WOULD HAVE 30 YEARS.

BUT SINCE THE JURY FOUND DISCHARGE OF A FIREARM WITH GREAT BODILY HARM OR DEATH, THIS

PUTS THIS IN 2A3, WHERE THE JUDGE HAS THAT RANGE. THAT'S HOW THIS COURT INTERPRETED THAT LANGUAGE IN MENDENHALL.

NOW, THIS COURT HAS SAID THAT THAT LANGUAGE MEANS THAT THE JUDGE CAN GIVE A SENTENCE BETWEEN 25 AND LIFE, A MANDATORY MINIMUM SENTENCE BETWEEN 25 AND LIFE.

SO IT SEEMS ODD THAT THAT LANGUAGE COULD MEAN SOMETHING MORE.

>> LET ME ASK YOU, IF YOU GOT RELEASED, THIS GOES BACK FOR RESENTENCING, COULD THE TRIAL JUDGE SENTENCE HIM TO 40 YEARS MINIMUM MANDATORY?

>> NO.

OUR POSITION IS THAT THE JUDGE COULD NOT BECAUSE AS THE FIRST DCA HAS STATED IN KELLY AND OTHER COURTS HAVE REPEATEDLY STATED, ONCE A DEFENDANT BEGINS SERVING THAT 25-YEAR MANDATORY MINIMUM, THE COURT CANNOT INCREASE THE SENTENCE THAT IT ALREADY IMPOSED.

SO IF THIS WENT BACK, THE TRIAL COURT WOULD HAVE THE OPTION -- WOULD HAVE TO IMPOSE THE 25-YEAR MANDATORY MINIMUM AND THEN COULD IMPOSE --

>> IS THAT TRUE?

IS THAT ALWAYS TRUE?

FOR INSTANCE, IF A TRIAL COURT FAILS TO IMPOSE A STATUTORILY-REQUIRED MANDATORY SENTENCE, IMPOSES A LOWER SENTENCE, THAT GETS APPEALED, IN THOSE CIRCUMSTANCES ON REMAND THERE'S NOT A LIMITATION TO WHAT HAD ORIGINALLY BEEN THE SENTENCE, IS THERE?

>> I WOULD AGREE WITH YOU ON THAT.

>> OKAY.

WELL, IN THIS CIRCUMSTANCE THE TRIAL COURT HAS ACTED BASED ON A

MISUNDERSTANDING OF THE LAW.
THIS IS NOT A QUESTION OF
EXERCISING DISCRETION, BUT IT'S
CLEAR THAT THERE IS A LEGAL
ERROR THAT AFFECTED THE DECISION
OF THE TRIAL COURT.

WHY IS THAT DIFFERENT THAN THE
LEGAL ERROR THAT WOULD BE
UNDERLYING A TRIAL COURT'S
DECISION TO NOT IMPOSE A MINIMUM
MANDATORY WHEN THAT WAS BARRED?

>> BECAUSE IN THIS CASE -- IN
THIS CASE THE TRIAL JUDGE
IMPOSED A LEGAL SENTENCE UNDER
MANDATORY MINIMUM 10-20-LIFE.

THE JUDGE IMPOSED A LEGAL
25-YEAR MANDATORY MINIMUM USING
THE 10-20-LIFE STATUTE.

THE PART OF THE SENTENCE THAT WE
SAY IS ILLEGAL IS THE 40 YEARS
BECAUSE THERE ISN'T ANY
STATUTORY AUTHORITY THAT
SUPPORTS THE IMPOSITION OF THE
40 YEARS.

>> COULD THE JUDGE HAVE
SENTENCED HIM TO MORE THAN 40
YEARS?

>> THE JUDGE COULD HAVE
SENTENCED A MANDATORY MINIMUM
ANYWHERE BETWEEN 25 YEARS AND
LIFE.

>> RIGHT.

SO CHOOSING THE NUMBER 40, 40
YEARS, THAT WAS A DISCRETIONARY
ACT ON THE JUDGE'S PART.

>> CORRECT.

>> SO ISN'T THAT A BIT DIFFERENT
THAN A JUDGE REFUSING TO IMPOSE
-- LET'S SAY THE STATUTE
REQUIRES A THREE-YEAR MANDATORY
MINIMUM BECAUSE OF THE USE OF A
FIREARM OR WHATEVER AND THE
JUDGE REFUSES TO IMPOSE THE
THREE-YEAR MANDATORY MINIMUM.
UNDER THAT CIRCUMSTANCE,
CERTAINLY WHEN THE CASE WENT
BACK ON APPEAL, THE JUDGE COULD
IMPOSE THE THREE-YEAR MANDATORY
MINIMUM.

>> I AGREE, BECAUSE THE JUDGE

--

>> IN THIS INSTANCE, HOWEVER,
THE JUDGE DID USE SOME
DISCRETION IN DECIDING 40 YEARS
WITHOUT A MANDATORY MINIMUM.
HE COULD HAVE CHOSEN MORE THAN
40 YEARS IF HE WANTED TO.

>> WELL, IN THIS CASE THE JUDGE
EXERCISED HER DISCRETION BY
IMPOSING A 25-YEAR MANDATORY
MINIMUM.

SO --

>> BUT THE STATUTE REQUIRED THAT
HE IMPOSE A 40-YEAR MANDATORY
MINIMUM.

HE CHOSE THAT.

IS THAT CORRECT?

AM I WRONG?

>> NO.

THAT IS NOT CORRECT.

AS THIS COURT SAID IN
MENDENHALL, 25 YEARS TO LIFE IS
THE RANGE.

THAT'S WHAT THE JUDGE GETS TO
PICK FROM WHEN HE OR SHE IS
IMPOSING THE MANDATORY MINIMUM
SENTENCE.

SO WE'RE NOT SAYING THAT THE
25-YEAR MANDATORY MINIMUM
SENTENCE IN THIS CASE IS A LEGAL
ERROR AT ALL.

WE'RE SAYING WHAT STATUTE CAN
ANYONE POINT TO THAT SUPPORTS
THE IMPOSITION OF A 40-YEAR
SENTENCE IN CONJUNCTION WITH
THIS MANDATORY MINIMUM SENTENCE?

>> WELL, LET'S PUT IT THIS WAY.
FROM THE QUESTIONS FROM THE
BENCH, IF YOUR CLIENT NOW HAD
THE OPTION OF SERVING THE
25-YEAR MANDATORY MINIMUM, BUT
UP TO 40 YEARS, WHERE THE OTHER
15 YEARS WAS NOT PART OF THE
MANDATORY MINIMUM, OR GOING BACK
AND HAVING THE JUDGE IMPOSE A
40-YEAR MANDATORY MINIMUM, YOU'D
PREFER THE ILLEGAL SENTENCE.

I MEAN, --

>> I BELIEVE THAT IF THE JUDGE
WERE TO IMPOSE ANYTHING MORE

THAN A 25-YEAR MANDATORY MINIMUM ON REMAND, IF WE WERE TO SUCCEED IN THIS CASE, THAT THAT WOULD BE AN ILLEGAL SENTENCE.

>> BUT WHY IS IT -- GENERALLY WHEN YOU APPEAL AND YOUR SENTENCE IS REVERSED, YOU START FROM SCRATCH.

SO WHY DON'T YOU START FROM SCRATCH HERE?

>> YOU DON'T START FROM SCRATCH BECAUSE THERE'S -- WELL, THERE IS SUPPORTING CASE LAW FROM THE FIRST DCA AND THE FOURTH DCA THAT IS CITED IN THE FIRST DCA'S KELLY OPINION, WHICH IS CASE IS VERY RELATED TO, THAT SAYS IT IS WELL-ESTABLISHED THAT ONCE A DEFENDANT HAS BEGUN SERVING A LAWFULLY-IMPOSE SENTENCE, THE DEFENDANT MAY NOT BE RESENTENCED FOR AN INCREASED TERM OF INCARCERATION.

>> BUT YOU'RE ARGUING THAT HE'S SERVING AN ILLEGAL SENTENCE, BASICALLY.

SO YOU ARE TRYING TO PARSE THIS OUT AND SAY ONE PART IS LEGAL, THE OTHER PART IS ILLEGAL, BUT IT SEEMS TO ME THE WHOLE THING BECOMES AN ILLEGAL SENTENCE IF THERE'S A PORTION OF IT THAT'S ILLEGAL.

>> WELL, AREN'T YOU SAYING THAT ONCE THE JUDGE MADE THE CHOICE OF THE LEGAL SENTENCE, THAT HE HAS TO START THERE UNLESS HE HAS FURTHER AUTHORITY TO INCREASE IT?

>> IT HAS TO BE AUTHORIZED BY LAW, SOME LAW.

>> AND THERE'S NO OTHER AUTHORIZATION BY LAW THAT ALLOWS THAT.

>> WELL, IT APPEARS TO ME THAT THE STATE IN THE FIRST DCA --

>> THAT'S A FRIENDLY QUESTION.

>> THE FIRST -- WAIT.

I'M SORRY?

EXCUSE ME?

>> HE SAID IT WAS A FRIENDLY QUESTION.
>> JUST SAY YES.
>> YES.
THE STATE APPEARS TO BE ARGUING THAT 10-20-LIFE IS THE AUTHORITY THAT THIS COURT USED TO GIVE 40 YEARS.
>> WELL, HOW DID IT GO AT SENTENCING?
WHAT HAPPENED?
WHAT WAS THE COLLOQUY?
WHAT DID THE STATE ARGUE FOR?
DO WE KNOW?
>> I WOULD HAVE TO HEARKEN BACK TO MY FIRST DCA BRIEF, SEE IF I CAN FIND THAT.
I RECALL THAT -- I BELIEVE THAT THEY ASKED FOR 35 YEARS.
THERE WAS NOT A GREAT DEAL OF DISCUSSION ABOUT --
>> 35 YEARS UNDER THE 10-20-LIFE?
>> RIGHT.
>> AND THE JUDGE -- AND THEN THE JUDGE SAID I'M ONLY GOING TO GIVE -- BECAUSE HERE -- THIS MAN -- THIS DEFENDANT WAS CHARGED WITH MULTIPLE CRIMES, INCLUDING FIRST-DEGREE -- HE WAS CHARGED WITH FIRST-DEGREE MURDER?
>> NO.
>> WITH SECOND-DEGREE MURDER?
>> TWO COUNTS OF ATTEMPTED SECOND-DEGREE MURDER.
>> SECOND-DEGREE.
ON THE SECOND-DEGREE THE JURY FOUND MANSLAUGHTER.
>> SO THERE WAS MORE THAN ONE VICTIM?
>> YES.
>> BUT THE MANSLAUGHTER SENTENCE, WHAT HAPPENED TO THAT ONE?
>> THAT SENTENCE WAS A PRETTY SHORT SENTENCE AND THAT CAN'T BE ENHANCED UNDER 10-20-LIFE.
>> WAS IT TO BE SERVED CONSECUTIVELY OR CONCURRENTLY?
>> THAT ONE WAS CONCURRENT AND

--

>> SO THE JUDGE COULD HAVE MADE THAT CONSECUTIVE.

I MEAN, I GUESS HERE'S THE BOTTOM LINE.

THERE'S MANY WAYS THE JUDGE MIGHT HAVE EVEN GOTTEN TO A MANDATORY LIFE SENTENCE, AND UNDER THE 10-20-LIFE, AS I SAID AT THE BEGINNING, THE JUDGE COULD HAVE SENTENCED YOUR CLIENT TO THE MANDATORY MINIMUM OF LIFE IN PRISON.

>> CORRECT.

>> OKAY.

THE JUDGE THEN -- AND THIS GOES BACK -- EXERCISED DISCRETION, GAVE 25 YEARS, BUT THEN WHEN THE JUDGE GAVE THE ADDITIONAL 15, DID THE JUDGE SAY UNDER WHAT AUTHORITY THE JUDGE WAS GIVING THE ADDITIONAL 15 YEARS?

>> NO.

>> LET ME ASK YOU, ON THE REMAND FOR RESENTENCING, IS THE ISSUE AS TO WHAT THAT SENTENCING CAN BE BEFORE US?

>> I'M NOT ENTIRELY CLEAR.

>> RIGHT.

YOU DID NOT BRIEF THAT, RIGHT?

>> RIGHT.

>> SO THAT ISSUE IS REALLY NOT BEFORE US.

THAT'S AN ISSUE FOR ANOTHER DAY IF IT COMES UP.

>> I AGREE.

>> OKAY.

>> WHAT A GOOD WAY TO COMPROMISE.

BUT GENERALLY SPEAKING, I THINK YOU'RE -- I MEAN, I THINK YOU'RE RIGHT, THAT YOU CAN'T -- ONCE YOU'RE SERVING THE SENTENCE, SENTENCE CAN'T BE ENHANCED, AND IT WOULD BE -- IF THE SENTENCE WAS A 40-YEAR MANDATORY MINIMUM, RIGHT -- WHAT'S THE DIFFERENCE -- LET ME JUST ASK YOU, MAKE SURE I UNDERSTAND.

IF IT WAS A 40 YEAR MANDATORY

MINIMUM, HE'D HAVE TO SERVE THE 40 YEARS.

IF IT WAS 25 YEARS MANDATORY MINIMUM, SAY THE STATUTE DID ALLOW FOR THE ADDITIONAL 15, HE'D START TO BE ABLE TO ACCRUE AFTER 25 YEARS TIME?

>> CORRECT.

>> SO IT MIGHT NOT BE A FULL 40 YEARS THAT HE SERVED.

>> CORRECT.

THIS CASE, THE UNDERLYING FACTS ARE A GOOD EXAMPLE OF WHY A JUDGE HAS DISCRETION, WHERE THERE'S DISCHARGE OF A FIREARM AND GREAT BODILY HARM OR DEATH, BECAUSE IT WAS A 19-YEAR-OLD KID, PANICKED, PULLED THE GUN WHERE THERE WAS A FIGHT GOING ON, AND THE PERSON WHO ACTUALLY PERISHED WAS HIS BEST FRIEND. HE SHOT THROUGH THE SHOULDER OF THE MAN WHO LIVED.

SO THE MANSLAUGHTER COUNT WAS A FRIEND OF HIS.

AND I BELIEVE THAT THE JUDGE LOOKED AT ALL OF THE CIRCUMSTANCES OF THE CASE AND SAID THIS IS NOT ONE OF THOSE CASES WHERE I'M GOING TO GIVE MANDATORY LIFE.

AND, I MEAN, IN MY PERSONAL EXPERIENCE, PROFESSIONAL EXPERIENCE, THEY DO IT OFTEN. OFTEN THEY WILL -- JUDGES WILL GIVE MANDATORY MINIMUM OF LIFE. IN THIS CASE AND IN ALL OF THESE CASES THAT WE'RE LOOKING AT, I AM JUST ASKING FOR -- AND I KNOW I'M NOT HERE TO ASK THE QUESTIONS, BUT I GUESS IT'S JUST SORT OF A RHETORICAL QUESTION. WHAT IS THE STATUTE THAT SUPPORTS THE 40 YEARS?

>> WELL, YOU'RE SAYING THERE IS NO STATUTE.

>> CORRECT.

>> YOU'RE ASSERTING THAT. YOU'RE NOT REALLY ASKING A QUESTION.

YOU'RE ARGUING THAT THERE IS NO STATUTE THAT SUPPORTS THE 40 YEARS.

>> THERE IS NOT.

>> RIGHT.

>> THERE WOULD HAVE BEEN IF THE JUDGE HAD SAID I'M IMPOSING A 40-YEAR MANDATORY MINIMUM SENTENCE.

>> CORRECT.

>> AND THAT WOULD HAVE BEEN THE PRONOUNCEMENT AND THAT WOULD HAVE BEEN A LEGAL SENTENCE.

>> CORRECT.

>> SO YOUR BOTTOM LINE IS ON RESENTENCING, ALL HE COULD GIVE HIM IS A 25-YEAR MANDATORY MINIMUM PLUS FIVE YEARS UNDER THE -- BECAUSE THE MAXIMUM FOR THIS CRIME IS 30 YEARS?

>> CORRECT.

AND I THINK THAT -- I THINK THAT THIS COURT --

>> YOU KNOW, I DON'T UNDERSTAND IN SOME WAYS HOW THAT IS CONSISTENT WITH -- AGAIN, THIS REMAND ISSUE MAY BE RELEVANT BECAUSE IT'S NOT REALLY BEEN PRESENTED.

BUT IF THAT'S WHAT YOU'RE CONTENDING, THEN THAT KIND OF CUTS AGAINST THE FUNDAMENTAL ARGUMENT THAT, WELL, THERE WAS A LEGAL PART OF THIS, THE 25 YEARS MINIMUM MANDATORY, AND THE REST OF IT WASN'T ILLEGAL, SO IT OUGHT TO BE LIMITED TO WHAT THE LEGAL PART WAS, BECAUSE HE'S SERVING A LEGAL SENTENCE ON THAT.

AND THAT CAN'T BE INCREASED.

>> CORRECT.

>> BUT YOU'RE SAYING IT CAN. BY FIVE YEARS.

>> NO.

NO.

WHAT I'M SAYING IS THAT THE 25-YEAR MANDATORY MINIMUM CANNOT BE INCREASED.

BUT THE JUDGE COULD ON REMAND --

IF THIS CASE WERE REMANDED AND WE SUCCEEDED, THE JUDGE COULD IMPOSE THE 25 YEARS AS PART OF A 30-YEAR SENTENCE BECAUSE THAT'S WHERE THE STATUTORY MAXIMUM CUTS IT OFF.

AND I WILL RESERVE THE REST OF MY TIME FOR REBUTTAL.

THANK YOU.

>> MAY IT PLEASE THE COURT, ANGELA HENSEL ALONG WITH TRISHA PATE ON BEHALF OF THE STATE.

>> YOU'RE GOING TO HAVE TO SPEAK INTO THAT MIC.

>> IS THAT BETTER?

JUSTICE PARIENTE, I THINK THAT YOU HIT THE NAIL ON THE HEAD. THE ISSUE HERE IS THE LABEL NOT GIVEN TO THE EXTRA 15 YEARS. IN MENDENHALL THIS COURT DID SAY THAT YOU CAN GIVE A MINIMUM MANDATORY WITH A RANGE OF 25 TO LIFE FOR THIS NARROW SET OF CASES WHERE THERE IS A DISCHARGE WITH DEATH OR GREAT BODILY HARM. SO HAD THE TRIAL JUDGE GIVEN HIM A MINIMUM MANDATORY OF LIFE, WE WOULDN'T BE HERE TODAY.

>> BUT HE DIDN'T.

>> HE DIDN'T.

CORRECT.

>> SO I GUESS THE REAL QUESTION THAT COMES BEFORE US IS SO WHAT IS THE AUTHORITY FOR THE 15 YEARS THAT HE TACKED ON TO THE MINIMUM MANDATORY?

>> WELL, THE STATE'S POSITION IS THAT THE FIRST DISTRICT WAS CORRECT IN KELLY IN THE PLAIN LANGUAGE OF THE STATUTE THAT SAYS YOU CAN GIVE A LONGER SENTENCE AS AUTHORIZED BY LAW, WHICH IS A VERY BROAD READING OF THE SENTENCING STATUTE.

>> BUT WHAT'S THE AUTHORIZED BY LAW THAT YOU CONTENDS ALLOWS THEM TO GIVE THE ADDITIONAL 15 YEARS?

>> 775.082, THE GENERAL STATUTORY MAXIMUM, BECAUSE THE

WORDS THAT FOLLOW AS AUTHORIZED BY LAW ARE THEN IN ADDITION TO.
>> SO THE AUTHORIZED BY LAW WOULD BE THE STATUTE THAT IS THE MAXIMUM SENTENCE FOR THAT CRIME, CORRECT?

>> YES.

>> THE MAXIMUM SENTENCE FOR THAT CRIME IS 30 YEARS?

>> FOR A FIRST-DEGREE FELONY, YES.

>> SO HE ALREADY HAS THE 25. SO HOW DO YOU GET TO THE 15?

>> WELL, THE STATUTE READS CLEARLY IN ADDITION TO THE MINIMUM MANDATORY SENTENCE.

SO THE FIRST DISTRICT INTERPRETED THAT --

>> SO YOU'RE SAYING THE JUDGE COULD IN FACT HAVE GIVEN HIM THE 25-YEAR MANDATORY MINIMUM PLUS 30.

>> UNDER THE FIRST DISTRICT'S INTERPRETATION, YES, WHICH WOULD BE CONSISTENT WITH THIS COURT'S HOLDING IN MENDENHALL THAT YOU CAN GO ABOVE THE STATUTORY MAXIMUM.

SO NOW IT'S JUST A QUESTION OF --

>> BUT I THOUGHT IT MEANT AS A MINIMUM MANDATORY SENTENCE YOU COULD GO ABOVE THE STATUTORY MAXIMUM.

ISN'T THAT WHAT MENDENHALL IS ABOUT?

>> YES.

AND THE STATE WOULD ARGUE THAT IT WOULD STAND TO REASON THAT IF YOU CAN GO ABOVE THE STATUTORY MAXIMUM, THEN YOU COULD CERTAINLY GO OVER BY NOT LABELING IT AS A MINIMUM MANDATORY.

AND BY DOING SO, BY GIVING THESE MINIMUM MANDATORY SENTENCES, YOU'RE ACTUALLY DOING A DETRIMENT TO THE DEFENDANT BECAUSE THEN THEY HAVE TO SERVE DAY FOR DAY AS OPPOSED TO

RECEIVING THEM OPPORTUNITY TO RECEIVE GAIN TIME IN THE LAST 15 YEARS.

>> BUT I THINK THIS IS THE PROBLEM.

THE PROBLEM WE'RE GETTING TO IS -- MAYBE THE LEGISLATURE, THIS WOULD BE AN IMPORTANT AREA FOR THE LEGISLATURE TO CLARIFY, BECAUSE THIS WHOLE ISSUE OF THE 10-20-LIFE FOR DISCHARGING THE FIREARM -- AND WE DON'T KNOW THE FACTS, BUT CLEARLY THE JUDGE DIDN'T FEEL THESE WERE FACTS THAT WOULD JUSTIFY A MANDATORY LIFE SENTENCE.

>> CORRECT.

>> WHAT WAS IT THAT THE STATE ARGUED FOR?

WHAT SENTENCE DID THEY ARGUE FOR?

>> AT SENTENCING, THERE WASN'T MUCH ARGUMENT.

THE TRIAL JUDGE ASKED, YOU KNOW, WHAT DOES THE STATE WANT, AND THE STATE ACTUALLY POSED A HYPOTHETICAL OF 40 YEARS WITH A 25-YEAR MINIMUM MANDATORY. AFTER HEARING THE LETTER FROM THE DEFENDANT'S GRANDMOTHER, THE JUDGE WENT AHEAD AND IMPOSED THE 40 YEARS.

>> SO THE JUDGE FOLLOWED THE STATE.

THE STATE WAS UNDER THE IMPRESSION THAT THAT COULD HAPPEN BASED ON -- WAS KELLY ALREADY DECIDED?

>> NO.

I DO NOT BELIEVE SO.

>> SO, I MEAN, I THINK THAT THE PROBLEM WE HAVE IS YOU'RE SAYING NOW THE INTERPRETATION IS THAT -- BECAUSE USUALLY MANDATORY MINIMUMS, IT'S PART OF THE SENTENCE.

>> RIGHT.

>> SO IT'S A SENTENCE OF 25 YEARS WITH A THREE-YEAR MANDATORY MINIMUM.

IT'S NOT IN ADDITION.

>> RIGHT.

>> AND I THINK WE WENT AS FAR IN MENDENHALL TO SAY IT COULD BE MANDATORY MINIMUM UP TO LIFE. I GUESS IF THE LEGISLATURE WANTS THERE TO BE HARSHER MANDATORY MINIMUMS, BUT GIVING THE JUDGE DISCRETION TO HAVE NOT DAY FOR DAY, MAYBE THEY NEED TO CLARIFY WHAT THEY MEAN.

>> WELL, THE STATE WOULD ARGUE THAT THE FIRST DISTRICT'S INTERPRETATION IS CORRECT. BUT IF YOU'RE NOT INCLINED TO FOLLOW THE PLAIN LANGUAGE, I WOULD LIKE TO POINT OUT THAT THE ONE CASE THAT'S REALLY DISCUSSED IS WILEY.

IN WILEY THEY NEVER DISCUSSED THE MAXIMUM OF 30 YEARS. THE HOLDING WAS IF YOU GO ABOVE THE 25 YEARS THAT WAS IMPOSED, YOU MUST HAVE SOME OUTSIDE STATUTORY AUTHORITY.

SO THE STATE WOULD ACTUALLY ARGUE THAT THE CONFLICT IS MORE WITH WOOTEN AND MCLEOD FROM THE FIFTH DISTRICT.

SO IF YOU WERE TO REJECT THE FIRST DISTRICT'S INTERPRETATION, THEN THE STATE WOULD ASK THAT THE INTERPRETATION WOULD BE THAT YOU CAN IMPOSE ONLY THE MAXIMUM OF 30 YEARS WHEN YOU IMPOSE A MINIMUM MANDATORY THAT'S LESS THAN 25.

JUST WANTED TO POINT OUT THAT WILEY'S NOT REALLY ON POINT ON THE ISSUE THAT'S HERE.

SO --

>> BUT WILEY SEEMS TO SAY THAT YOU CAN GIVE -- WHATEVER THAT RANGE IS UNDER THE 10-20-LIFE, BUT THAT THE OTHER -- ANY OTHER SENTENCE HAS TO BE AUTHORIZED BY LAW.

>> CORRECT.

>> ISN'T THAT WHAT WILEY SAYS ALSO?

>> I'M TALKING ABOUT THE LAST FIVE YEARS.
WILEY ONLY TALKS ABOUT THE 25-YEAR MINIMUM MANDATORY, NEVER DISCUSSES THAT YOU'RE THEN CAPPED AT 30.
THAT COMES FROM WOOTEN AND MCLEOD.

I MIGHT BE BUTCHERING THAT, BUT THEY'RE BOTH FROM THE FIFTH DISTRICT AND THEY TALK ABOUT THE CAP BEING AT 30 YEARS.

JUST WANTED TO POINT THAT IT'S NOT REALLY DISCUSSED -- I MEAN, I'M NOT DISAGREEING WITH, YOU KNOW, THE HOLDING IS THERE MUST BE SOME OUTSIDE AUTHORITY AND THE STATE WOULD ARGUE THAT IF THAT IS WHAT THIS COURT DECIDES, THEN FOR THOSE EXTRA 15 YEARS UNDER WILEY, YOU WOULD NEED THE ADDITIONAL --

>> BUT IF THAT'S THE CASE, THEN IN THIS CASE THE TRIAL JUDGE COULD ONLY HAVE GIVEN HIM AN ADDITIONAL FIVE YEARS.

>> IF THE COURT ADOPTS THE INTERPRETATION OF WOOTEN AND MCLEOD.

BUT THE STATE WOULD ARGUE UPON RESENTENCING THEY SHOULD BE GIVEN THE TO WANT TO GIVE HIM A MINIMUM MANDATORY UP TO 40 YEARS.

>> BUT, SEE, THERE -- I MEAN, THIS IS THE PROBLEM WITH IT. AND I DON'T KNOW THE STATE REALLY -- WE'RE IN A BIND SOMEWHAT.

AND I THINK WHAT JUSTICE POLSTON SAID IS IT'S NOT REALLY BEFORE US.

THE JUDGE WOULD BE IMPOSING A HARSHER SENTENCE THAN WAS INTENDED.

>> THIS IS THE ISSUE ADDRESSED IN KELLY.

THE STATE IS HAPPY TO DO SUPPLEMENTAL BRIEFING ON THIS IF THE COURT WOULD LIKE.

>> WHY DON'T WE LET THE FIRST DISTRICT OR MAYBE THE JUDGE DO.

>> STATE WOULD ASK IF YOU DO REMAND THAT HE BE ABLE TO GIVE THE 40-YEAR SENTENCE.

>> I JUST WANT TO MAKE SURE, THE JUDGE INTENDED NOT TO GIVE A 40-YEAR MANDATORY MINIMUM.

AND THE STATE APPARENTLY -- THE STATE WASN'T ARGUING FOR A 40-YEAR MANDATORY MINIMUM.

>> NO.

LIKE I SAID, IT'S ON PAGE 4 OF THE SENTENCING HEARING, WHERE HE JUST SAID , JUDGE, YOU CAN GIVE THE MINIMUM MANDATORY IN ADDITION TO AND HE POSED A HYPOTHETICAL, 40 WITH 25.

AND THAT'S WHAT THE JUDGE WENT WITH.

THEN HE GAVE A CONCURRENT 60 MONTHS PROBATION AND FIVE YEARS ON THE POSSESSION OF FIREARM. ARGUABLY HIS INTENT WAS TO GIVE HIM A FULL 40 YEARS, WHICH WOULD BE WHAT HIS MINIMUM MANDATORY SHOULD BE.

THANK YOU.

>> MAY IT PLEASE THE COURT, THE STATE HAS SAID THAT THE LANGUAGE, THE STATUTE THAT SAYS AS AUTHORIZED BY LAW IN ADDITION TO MEANS THAT THIS IS GOING TO BE A SEPARATE SENTENCE THAT'S TACKED ON TO THE END OF THE MANDATORY MINIMUM SENTENCE THAT WAS GIVEN.

I DON'T FIND THAT IN ANY OF THE CASE LAW AND THAT SOUNDS LIKE AN INTERPRETATION OF THE STATUTE THAT WE'RE TALKING ABOUT, THE SUBSECTION WITH THE RANGE.

THIS COURT HAS ALREADY HELD IN MENDENHALL THAT THAT SECTION, SUBSECTION, IS UNAMBIGUOUS AND THAT IT UNAMBIGUOUSLY GIVES THE JUDGE DISCRETION TO IMPOSE A MANDATORY MINIMUM BETWEEN 25 AND LIFE.

IF THAT STATUTE IS UNAMBIGUOUS

AS THIS COURT HAS SAID, IT'S IMPOSSIBLE FOR THAT STATUTE TO MEAN MORE THAN WHAT THIS COURT HAS ALREADY STATED THAT IT UNAMBIGUOUSLY MEANS.

AS FAR AS WILEY GOES, I DO THINK THAT THE FIRST DISTRICT COURT OF APPEAL HAS NOT NECESSARILY READ WILEY CORRECTLY BECAUSE THE FIRST DCA IN SAYING THAT WILEY MEANS THERE HAS TO BE A SENTENCE-ENHANCING STATUTE IN ORDER TO GO ABOVE THE MANDATORY MINIMUM.

I DON'T THINK THAT'S WHAT WILEY WHAT.

WHAT WILEY SAYS IS ONCE YOU CHOOSE THE MANDATORY MINIMUM, THERE HAS TO BE SOME SENTENCING AUTHORITY WITHIN THE FLORIDA STATUTES.

THE CRIMINAL PUNISHMENT CODE GIVES THE STATUTORY MAXIMUMS AND THEN SAYS IF YOU -- GIVES THE STATUTORY MAXIMUMS AND SAYS THE TRIAL COURT MAY IMPOSE A SENTENCE UP TO AND INCLUDING THE STATUTORY MAXIMUM FOR ANY OFFENSE, INCLUDING -- AND IT GOES ON WITH SOME IRRELEVANT STUFF.

BUT THE CRIMINAL PUNISHMENT QUOTE APPLIES TO ALL FELONY OFFENSES EXCEPT CAPITAL OFFENSES.

AND JUST BECAUSE THERE IS A SPECIFIC SENTENCING STATUTE THAT DEALS ONLY WITH MANDATORY MINIMUMS DOES NOT REMOVE THE SENTENCING COMPLETELY FROM THE CRIMINAL PUNISHMENT.

>> WHAT WOULD REALLY HAPPEN IN SENTENCING IS THESE SENTENCING GUIDELINES THAT USED TO HAVE SOME UNIFORMITY, ANOTHER JUDGE COULD HAVE GIVEN YOUR CLIENT A MANDATORY LIFE SENTENCE AND NOT EXPLAINED ONE REASON WHY HE OR SHE WAS GIVING IT, RIGHT?

>> THAT'S CORRECT.

>> OR A 25-YEAR SENTENCE.

>> THAT'S CORRECT.

AND THAT'S WHY I BROUGHT UP THE FACTS OF THIS CASE, BECAUSE, I MEAN, IT'S SPECULATION, BUT I THINKING MANY JUDGES WOULD IMPOSE THIS TYPE OF SENTENCE AS THE MANDATORY MINIMUM.

NOW, IN THE LEGISLATIVE INTENT, WHEN 10-20-LIFE WAS PASSED IN 1999, THERE'S A LAW THAT SAYS THIS IS IMPORTANT, WE WANT TO PUNISH PEOPLE TO THE MAXIMUM. BUT ANOTHER THING IT SAYS IS IT'S THE INTENT OF THE LEGISLATURE THAT THE STATE IMPOSE THE MANDATORY MINIMUM SECTIONS REQUIRED IN THIS SECTION.

WITHIN THE 10-20-LIFE STATUTE IT ALSO SAYS -- IT REFERS TO MINIMUM TERMS OF IMPRISONMENT IMPOSED PURSUANT TO THIS SUBSECTION.

THE WHOLE SUBSECTION ABOUT 10-20-LIFE IS ABOUT IMPOSING A MANDATORY MINIMUM TERM.

AND IT IS THE EXCEPTION TO THE CRIMINAL PUNISHMENT CODE THAT ALLOWS THE JUDGE TO GO ABOVE THAT STATUTORY MAXIMUM.

THE JUDGE IN THIS CASE DID NOT EXERCISE THE DISCRETION GIVEN BY THE 10-20-LIFE STATUTE TO GO ABOVE THE STATUTORY MAXIMUM.

THEREFORE, IT'S OUR POSITION THAT THE STATUTORY MAXIMUM STILL CONTROLS AND THE JUDGE HAD EVERY OPPORTUNITY TO GIVE ANY SENTENCE WITHIN 25 YEARS TO LIFE.

SO THAT IS ESSENTIALLY OUR CASE.

WE -- THERE'S NOTHING IN 10-20-LIFE THAT EMPOWERS THE COURT TO GIVE A SENTENCE THAT'S NOT A MANDATORY MINIMUM.

AND WE WOULD ASK THAT THIS COURT QUASH THE FIRST DCA'S DECISION AND RESOLVE THIS CONFLICT BY DETERMINING THE CONFLICT CASES WHICH HAVE HELD THAT WHERE THE

25 MANDATORY MINIMUM IS GIVEN,
THAT IT'S CAPPED AT 30 YEARS.
THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.