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PRELIMINARY STATEMENT

The issue in this case is the same as in Ridge Gabriel v. State, SC19-2155. Namely, whether the exception that the lowest permissible sentence ("LPS") becomes the minimum mandatory sentence if it exceeds the statutory maximum sentence is triggered. The LPS is a minimum sentence; the question is whether it is an individual minimum sentence, required to be imposed on each offense at sentencing - whether a primary or an additional offense - for which it exceeds that offense's statutory maximum, or a collective minimum sentence. Although this Court has interpreted section 921.0024(2), it has not addressed the issue presented here.

This Court currently is considering whether to review Gabriel v. State, No. 5D18-3264, 2019 WL 6621255 (Fla. 5th DCA Dec. 6, 2019). Counsel recognizes the stay issued in the instant case on March 23, 2020 pending disposition in Gabriel. However, in an abundance of caution, since the stay order did not explicitly state to disregard this Court's briefing order issued on March 19, 2020, counsel is submitting this jurisdictional brief.

STATEMENT OF THE CASE AND FACTS

Mr. Treadway entered an open plea to the following charges: (1) Sexual Activity, contrary to section 794.011(8)(b), Florida Statutes (2013); (2) Sexual Activity, contrary to section 794.011(8)(b), Florida Statutes (2013); (3) Lewd or Lascivious Molestation, contrary to section 800.04(5)(c)(2), Florida Statutes (2013); (4) Sexual Activity, contrary to section 794.011(8)(b), Florida Statutes (2013); and (5) Lewd or Lascivious Molestation, contrary to section 800.04(5)(c)(2), Florida Statutes (2013). (R48-51) The trial court sentenced Mr. Treadway to concurrent terms of 40 years in prison for all counts. (R48-51) The score sheet reflected a lowest permissible sentence of 399.3 months (33.275 years) in prison. (R149-50)

After Mr. Treadway filed a Motion to Correct Sentencing Error, the trial court resentenced Mr. Treadway, as to counts three and five, to 399 months in prison. (R174-190, 201-05, 214-21)

Mr. Treadway filed a Second Motion to Correct Sentencing Error, alleging that because statutory maximum for his primary offense is life, sentencing Mr. Treadway to the LPS for the primary offense satisfies the directive of section 921.0024(2) and the sentences for the remaining second-degree felonies

should not exceed the statutory maximum of 15 years. The trial court, relying on Champagne v. State, 269 So. 3d 629, 636 (Fla. 2d DCA 2019), denied the motion. (R234-35)

In Champagne, the Second District held that section 921.0024(2) provides that the LPS becomes the mandatory minimum sentence for both primary and additional offenses in the event the LPS exceeds the felony's statutory maximum sentence. The conclusion reached by the Second District in Champagne conflicts with the Fifth District's opinion in Gabriel v. State, No. 5D18-3264, 2019 WL 6621255 (Fla. 5th DCA Dec. 6, 2019). According to Gabriel, if the LPS does not exceed the total statutory maximum sentence for all offenses, the counts whose maximums were not exceeded by the LPS should be capped by their individual statutory maximum sentences. Id. at 1.

Both the Fifth District in Gabriel and the Second District in Champagne certified conflict and certified the following question:

IS THE LOWEST PERMISSIBLE SENTENCE AS DEFINED BY AND APPLIED IN SECTION 921.0024(2), FLORIDA STATUTES (2017), AN INDIVIDUAL MINIMUM SENTENCE AND NOT A COLLECTIVE MINIMUM SENTENCE WHERE THERE ARE MULTIPLE CONVICTIONS SUBJECT TO SENTENCING ON A SINGLE SCORESHEET?

Id. at 3; Champagne, 269 So. 3d at 639.

In the instant case, the Second District affirmed the trial court's order denying Mr. Treadway's second motion for relief pursuant to rule 3.800(b)(2), Florida Rules of Criminal Procedure, based on Champagne. Treadway v. State, No. 2D18-850, 2020 WL 1070945, at *1 (Fla. 2d DCA Mar. 6, 2020). The Second District again certified conflict with Gabriel and certified the same question cited above as a question of great public importance. Id. Petitioner timely invoked this Court's discretionary review and now requests that this Court accept review.

SUMMARY OF THE ARGUMENT

This Court possesses discretionary jurisdiction to review this appeal under Article V, section 3(b)(3) of the Florida Constitution, which authorizes jurisdiction over district court decisions that “expressly and directly conflict” with decisions of other districts on the same question of law. The decision below conflicts with Gabriel, where the Fifth District concluded that section 921.0024(2) requires the trial court to be bound by the statutory maximum for any felony at sentencing unless the LPS exceeds the collective statutory maximum sentence.

Given that the Fifth District and the Second District certified conflict with each other as well as certified a question to this Court, this Court should accept jurisdiction in this case, resolve the conflict, and answer the certified question.

ARGUMENT

ISSUE I

The Court Should Accept Jurisdiction.

The Second District decision expressly and directly conflicts with the Fifth District's decision in Gabriel. This Court possesses discretionary jurisdiction to consider appeals from district court decisions that “expressly and directly conflict[]” with decisions of this Court or another district on the same issue of law. See Art. V, § 3(b)(3), Fla. Const.

In Gabriel, the Fifth District considered the very same sentencing question at issue here but reached the opposite conclusion. Gabriel v. State, No. 5D18-3264, 2019 WL 6621255 (Fla. 5th DCA Dec. 6, 2019). Gabriel was sentenced for attempted robbery with a firearm (the primary offense), aggravated assault with a firearm, and resisting an officer with violence. Id. at 1. The statutory maximum for attempted robbery with a firearm is fifteen years, and the statutory maximum for both aggravated assault with a firearm and resisting an officer with violence is five years. Id. Gabriel's lowest permissible sentence was 107.25 months in prison, which exceeded the statutory maximums for aggravated assault and resisting arrest with violence. The trial

court sentenced Gabriel to fifteen years for attempted robbery with a firearm; 107.25 months for aggravated assault; and 107.25 months for resisting an officer with violence. Id.

The Fifth District interpreted Section 921.0024(2) as requiring the LPS to exceed the collective statutory maximum sentence for all felonies at sentencing in order for the LPS to become a mandatory sentence. Id. Therefore, his sentences for aggravated assault with a firearm and resisting an officer with violence were illegal because they should have been capped by their individual statutory maximum sentences. Id. at 2.

In Champagne v. State, 269 So. 3d 629, 636 (Fla. 2d DCA 2019), the defendant was convicted of Robbery with a Firearm (punishable by life) and False Imprisonment (carrying a five year statutory maximum). He was sentenced to life on the robbery count and to his lowest permissible sentence of twenty years on the additional third degree felony, far in excess of the statutory maximum of five years. Id. The Second District interpreted Section 921.0024(2) to require that the LPS becomes the mandatory minimum sentence for both primary and additional offenses in the event the LPS exceeds any of the felony's

statutory maximum sentences. Id. at 636.¹ In the instant case, the Second District affirmed the trial court's order denying Mr. Treadway's relief based on the controlling precedent in Champagne. Treadway v. State, No. 2D18-850, 2020 WL 1070945, at *1 (Fla. 2d DCA Mar. 6, 2020).

This Court's precedent does not sufficiently deal with the conflict between the district courts. In Butler v. State, 838 So. 2d 554, 556 (Fla. 2003), this Court did not determine whether the LPS is an individual or collective minimum or how to apply the LPS to multiple felonies at sentencing because the case involved only one felony offense. In Moore v. State, 882 So. 2d 977, 985 (Fla. 2004), this Court held the Criminal Punishment Code (CPC) takes all individual offenses together to establish the minimum sentence that may be imposed but does not establish a single maximum sentence and each individual offense maintains its own statutory maximum sentence. In other words, the CPC has no ceiling other than the statutory maximum punishment and permits stacking sentences consecutively. Id. at 986 (Pariente, C.J., concurring). However, Moore does not

¹ This Court is not currently considering Champagne for review because the pro se appellant never sought discretionary review despite the Second District's certification of both a conflict and a question of great public importance. See 2D17-3072 docket.

address how to apply the directive to impose the LPS when it exceeds the statutory maximum sentence.

Courts have not consistently applied the statutory language of Section 921.0024(2). "It is evident that the effect of section 921.0024(2)'s directive differs significantly if the LPS is an individual minimum sentence rather than a collective minimum sentence ... and the number of sentencing issues potentially impacted are "indeterminable." Champagne, 269 So. 3d at 638. This Court should accept jurisdiction in this matter in order to establish consistency throughout Florida and eliminate gratuitous variation in sentencing.

CONCLUSION

Petitioner therefore respectfully requests that the Court accept this case for review.

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to the Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this 3rd day of April, 2020.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

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