

IN THE SUPREME COURT OF FLORIDA

JAMES RAY BOOTH,

Petitioner,

Case no. SC09-1832

vs.

STATE OF FLORIDA,

Respondent.

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**ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL**

**JURISDICTIONAL BRIEF OF PETITIONER**

JAMES S. PURDY  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

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## **STATEMENT OF THE CASE AND FACTS**

After being found guilty by a jury of third degree felony murder, which was enhanced to a second degree felony, Petitioner was sentenced to life in prison as a habitual offender with a mandatory minimum of life. Petitioner sought review in the Fifth District Court of Appeal arguing that the trial court erred in imposing a sentence of life in prison, as a minimum mandatory, under 10-20-life in excess of the statutory maximum of 30 years as a habitual offender. Petitioner argued that Section 775.087(2), Florida Statutes (2005), does not create a new statutory maximum. Petitioner further argued that Section 775.087(2) did not allow courts to impose a sentence more than the minimum mandatory if the statutory maximum was less than the minimum mandatory relying on *Collazo v. State*, 966 So. 2d 429 (Fla. 4<sup>th</sup> DCA 2007), *Thurston v. State*, 984 So. 2d 1290 (Fla. 4<sup>th</sup> DCA 2008), *Wilson v. State*, 898 So. 2d 191 (Fla. 1<sup>st</sup> DCA 2005), *Sousa v. State*, 976 So. 2d 639 (Fla. 2<sup>nd</sup> DCA 2008), and the majority opinion in *Yasin v. State*, 896 So. 2d 875 (Fla. 5<sup>th</sup> DCA 2005).

The District Court affirmed the judgment and sentence, holding that Section 775.087(2) permitted courts to impose a sentence of 25 years to life, irregardless of the statutory maximum, for felonies in which a firearm was discharged resulting in the death or great bodily harm of a victim :

We agree with the panel decision in *Mendenhall* [v. State, 999 So. 2d 665 (Fla. 5<sup>th</sup> DCA 2008)], and with Judge Warner's dissent in *Collazo* (joined by Judges Gunther and Polen), that the relevant provisions of Section 775.087(2) are unambiguous and provide for a minimum mandatory sentence of twenty-five years to life, based upon discharge of a firearm resulting in death or great bodily harm to the victim during the course or commission of the underlying felony, irrespective of the maximum penalty on the underlying charge.

*Booth v. State*, 34 Fla. L. Weekly D1907 (Fla. 5<sup>th</sup> DCA Sept. 18, 2009). The Fifth District Court acknowledged that *Mendenhall v. State*, 999 So. 2d 665 (Fla. 5<sup>th</sup> DCA 2008) was in conflict with other Districts and certified conflict in *Booth* with *Collazo, Sousa, Thurston, Wilson, Johnson v. State*, 34 Fla. L. Weekly D1752 (Fla. 4<sup>th</sup> DCA Aug 26, 2009), *Leary v. State*, 980 So. 2d 622 (Fla. 4<sup>th</sup> DCA 2008).

A timely notice to invoke this Court's discretionary jurisdiction was filed on September 24, 2008.

## **SUMMARY OF ARGUMENT/ STANDARD OF REVIEW**

The Fifth District Court of Appeal has certified that its decision in *Booth v. State*, 34 Fla. L. Weekly D1907 (Fla. 5<sup>th</sup> DCA Sept. 18, 2009) is in direct conflict with the Fourth District Court of Appeal's opinions in *Collazo v. State*, 966 So. 2d 429 (Fla. 4<sup>th</sup> DCA 2007), *Johnson v. State*, 34 Fla. L. Weekly D1752 (Fla. 4<sup>th</sup> DCA Aug 26, 2009), *Thurston v. State*, 984 So. 2d 1290 (Fla. 4<sup>th</sup> DCA 2008), *Leary v. State*, 980 So. 2d 622 (Fla. 4<sup>th</sup> DCA 2008); the Second District Court of Appeal's opinion in *Sousa v. State*, 976 So. 2d 639 (Fla. 2<sup>nd</sup> DCA 2008); and the First District Court of Appeal's opinion in *Wilson v. State*, 898 So. 2d 191 (Fla. 1<sup>st</sup> DCA 2005). Accordingly, this Court has jurisdiction to accept the instant case for review pursuant to Article V, § 3(b)(3), Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(vi).

## ARGUMENT

**THIS COURT HAS JURISDICTION TO REVIEW  
BOOTH V. STATE, 34 FLA. L. WEEKLY D1907  
(FLA. 5<sup>TH</sup> DCA SEPT. 18, 2009), WHERE THE  
DECISION WAS CERTIFIED TO BE IN EXPRESS  
AND DIRECT CONFLICT WITH THE FIRST,  
SECOND AND FOURTH DISTRICT COURTS ON  
THE SAME POINT OF LAW.**

Pursuant to Article V, § 3(b)(3), Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(vi), this Court has discretionary jurisdiction over cases that “are certified to be in direct conflict with decisions of other district courts of appeal.” “[C]ertification of conflict provides [the Florida Supreme Court] with jurisdiction per se.” *State v. Vickery*, 961 So.2d 309, 312 (Fla. 2007). In the decision below, the district court of appeal certified conflict with the Fourth District Court of Appeal in *Collazo v. State*, 966 So. 2d 429 (Fla. 4<sup>th</sup> DCA 2007), *Johnson v. State*, 34 Fla. L. Weekly D1752 (Fla. 4<sup>th</sup> DCA Aug 26, 2009), *Thurston v. State*, 984 So. 2d 1290 (Fla. 4<sup>th</sup> DCA 2008), *Leary v. State*, 980 So. 2d 622 (Fla. 4<sup>th</sup> DCA 2008); the Second District Court of Appeal in *Sousa v. State*, 976 So. 2d 639 (Fla. 2<sup>nd</sup> DCA 2008); and the First District Court of Appeal in *Wilson v. State*, 898 So. 2d 191 (Fla. 1<sup>st</sup> DCA 2005), therefore this Court has jurisdiction to take this appeal.

The issue before the court below was whether the language within Section

775.087(2) limited the trial court to imposing a sentence of 30 years prison, as a minimum mandatory for the offense of third degree felony murder, as a second degree felony as a habitual offender. The Fifth District Court of Appeal set forth the issue on appeal as follows:

Booth's final argument is that he could not receive a life sentence on the third degree felony murder charge through application of the 10-20-life statute, section 775.087(2)(a), Florida Statutes (2008).

*Booth v. State*, 34 Fla. L. Weekly D1907 (Fla. 5<sup>th</sup> DCA Sept. 18, 2009). The district court affirmed petitioner's judgment and sentence stating "[a] panel of our court rejected this argument in *Mendenhall v. State*, 999 So. 2d 665 (Fla. 5<sup>th</sup> DCA 2008)." *Id.* In *Mendenhall*, the Fifth District Court of Appeal held that the defendant's sentence of 35 years imprisonment with a 35-year mandatory minimum for attempted second degree murder with a firearm was a legal sentence, because the 10-20-life statute authorized minimum mandatory sentences in excess of the statutory maximum. *Mendenhall*, 999 So. 2d at 668-669.

This Honorable Court accepted jurisdiction in *Mendenhall* on July 27, 2009 based upon the conflict with *Sousa* and *Wilson*. In *Wilson*, Wilson had been convicted of attempted second murder with a firearm, a first degree felony. *Wilson*, 898 So. 2d at 192. The First District Court of Appeal held:

Appellant is subject to a mandatory minimum sentence of 25 years pursuant to section 775.087(2)(a)3, Florida Statutes (2003), for discharge of a firearm resulting in death or great bodily harm. *Notwithstanding the minimum mandatory term, the maximum sentence the trial court properly may impose is a sentence of 30 years.*

*Id.*, at 192-193 (emphasis added).

Sousa was also convicted of attempted second degree murder with a firearm.

*Sousa*, 976 So. 2d at 639-640. The Second District Court of Appeal held:

It could be argued that the language of this statute overrides the language in section 775.080(3)(b) that provides for a thirty-year sentence. The case law, however, interprets these statutes in favor of the defendant, so that the maximum term of years is thirty.

*Id.* at 640 (citations omitted).

Collazo was convicted of third degree murder, a second degree felony, and originally sentenced to 30 years in prison as a minimum mandatory under 10-20-life. *Collazo*, 966 So. 2d at 430. In finding the sentence was in error, the Fourth District Court of Appeal held Section 775.087(2)(c), Florida Statutes (2004) limited the court to imposing a 25 year prison sentence as a minimum mandatory:

Appellant's conviction was based upon his discharge of a firearm which resulted in the victim's death. He was convicted of a second degree felony and under section 775.082(3)(c), the statutory maximum sentence is fifteen years. Section 775.087(2)(a)3, which is applicable to appellant, subjects him to a minimum mandatory

enhancement of twenty-five years to life. However, because the statutory maximum applicable to appellant is less than the minimum mandatory of twenty-five years, the court may only impose that minimum mandatory. Section 775.087(2)(c), Fla. Stat. (2004).

Id. at 431. The Fourth District reaffirmed this holding in *Johnson, Thurston and Leary*.

Based upon the above, the Fifth District Court properly certified conflict in this case. Since, the decision in petitioner's case has been certified to be in direct conflict with decisions from the First District Court of Appeal, Second District Court of Appeal, and Fourth District Court of Appeal this Court has jurisdiction to take this appeal.

**CONCLUSION**

Based on the foregoing reasons and authorities, petitioner respectfully requests this Honorable Court to accept jurisdiction of this case.

Respectfully submitted,

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PUBLIC DEFENDER  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon The Honorable Bill McCollum, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal, and mailed to: Mr. James Ray Booth, DOC# 058857, Hamilton Correctional Institution Annex, 10650 S.W. 46th Street, Jasper, Florida 32052, on this date of October 15, 2009.

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EDWARD J. WEISS  
ASSISTANT PUBLIC DEFENDER

**CERTIFICATE OF FONT**

I HEREBY certify that the size and style of type used in the brief is 14 point proportionally spaced Times New Roman.

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EDWARD J. WEISS  
ASSISTANT PUBLIC DEFENDER

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JAMES RAY BOOTH,

Petitioner,

Case no. SC09-1832

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APPENDIX