

IN THE SUPREME COURT OF FLORIDA

JASHUN B. PARRAMORE, :  
Petitioner, :  
vs. : Case No. SC14-2036  
STATE OF FLORIDA, :  
Respondent. :

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DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

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### STATEMENT OF THE CASE AND FACTS

On October 8, 2014, the Second District Court of Appeal issued an opinion in Parramore v. State, No. 2D13-4573 (Fla. 2d DCA Oct. 8, 2014). The Second District's opinion per curiam affirms the lower court ruling but provides a citation to Walle v. State, 99 So. 3d 967 (Fla. 2d DCA 2012). Walle is controlling authority within the Second District, and notably, Walle is pending in this Court. The opinion notes that Walle cites Henry v. State, 82 So. 2d 1084 (Fla. 5th DCA), review granted, 107 So. 3d 405 (Fla. 2012), which is also pending in this Court.

In this case, Mr. Parramore filed a successful motion to correct his illegal sentence after the issuing of Graham v. Florida, 130 S. Ct. 2011 (2010). Mr. Parramore was resentenced to 40 years in prison on his conviction for burglary of a dwelling with assault (with a firearm) and his conviction for sexual battery with a firearm. Both convictions mandated a 10-year minimum mandatory sentence for the possession of a firearm. Mr. Parramore also was sentenced to a 30-year sentence on the robbery with a firearm conviction. The trial court ordered these three sentences to run concurrent with each other, but consecutive to the 15 year sentences on other charges, totaling an aggregate 55-

year sentence.

In Walle, the Second District certified conflict with the First District's opinion in Adams v. State, 37 Fla. L. Weekly D1865 (Fla. 1st DCA Aug. 8, 2012), which is also in this Court, but stayed pending a decision in Gridine v. State, No. SC12-1223.

The issue in all of these cases whether Graham v. Florida, 130 S. Ct. 2011 (2010), which held that juveniles who committed solely nonhomicide crimes may not be subject to a life without parole sentences, applies to aggregate term-of-years sentences. The Second District has held in Walle, and in this case, that the holding in Graham applies solely to a single sentence of life without parole, and does not apply to aggregate term-of-years sentences.

A timely notice to invoke the discretionary jurisdiction of this Court was filed on October 17, 2014.

### SUMMARY OF THE ARGUMENT

The Second District's opinion in Parramore v. State, No. 2D13-4573 (Fla. 2d DCA Oct. 8, 2014), conflicts with the First District's decision in Adams v. State, 37 Fla. L. Weekly D1865 (Fla. 1st DCA Aug. 8, 2012). Parramore provides a citation to Walle v. State, 99 So. 3d 967 (Fla. 2d DCA 2012). In Walle, 99 So. 3d 967 (Fla. 2d DCA 2012), and in this case, the Second District held that the holding in Graham applies solely to a single sentence of life without parole, and does not apply to aggregate term-of-years sentences. In Adams, the First District held that Graham applies not only to life without parole sentences, but also to lengthy term-of-years sentences that amount to de facto life sentences. The First District defined "a de facto life sentence" as "one that exceeds the defendant's life expectancy." Id. at \*3. Because the Parramore ruling expressly and directly conflicts with the holding in Adams, discretionary review is warranted.

This Court also has conflict jurisdiction pursuant to Jollie v. State, 405 So. 2d 418 (Fla. 1981), because the opinion below cites, as controlling authority, Walle and Henry v. State, 82 So. 2d 1084 (Fla. 5th DCA), review granted, 107 So. 3d 405 (Fla. 2012). Both are pending in this Court.

Discretionary review is warranted. The Second District's ruling in Parramore expressly and correctly conflicts with the First District's holding in Adams. Moreover, cases with the same issue are currently pending before this Court. This Court should resolve conflict between the district courts on whether lengthy aggregate term-of-years sentences which are de facto life sentences violate Graham.

ARGUMENT  
ISSUE I

THE DECISION OF THE SECOND DISTRICT IN PARRAMORE V. STATE, NO. 2D13-4573 (FLA. 2D DCA OCT. 8, 2014), EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIRST DISTRICT'S DECISION IN ADAMS V. STATE, 37 FLA. L. WEEKLY D1865 (FLA. 1ST DCA AUG. 8, 2012).

The issue in this case is whether Graham v. Florida, 130 S. Ct. 2011 (2010), which held that juveniles who committed solely nonhomicide crimes may not be subject to a life without parole sentences, applies to aggregate term-of-years sentences. The Second District has held in Walle, and in this case, that the holding in Graham applies solely to a single sentence of life without parole, and does not apply to aggregate term-of-years sentences. This opinion directly and expressly conflicts with the First District's holding in Adams v. State, 37 Fla. L. Weekly D1865 (Fla. 1st DCA Aug. 8, 2012), which held that aggregate lengthy terms-of-years sentences which exceed the juvenile defendant's life expectancy are unconstitutional.

In Adams v. State, 37 Fla. L. Weekly D1865 (Fla. 1st DCA Aug. 8, 2012), the First District held that Graham applies not only to life without parole sentences, but also to lengthy term-of-years sentences that amount to de facto life sentences. The First District defined "a de facto life sentence" as "one that exceeds



the defendant's life expectancy." Id. at 3. In Walle, and in this case, the Second District that the holding in Graham applies solely to a single sentence of life without parole, and does not apply to aggregate term-of-years sentences.

In this case, a jury found Mr. Parramore guilty of several offenses including burglary of a dwelling with assault and with a firearm, robbery with a firearm, and sexual battery with a firearm. Mr. Parramore committed these offenses when he was a 16-year-old child. In 2008, the trial court sentenced Mr. Parramore to life in prison on these counts, all with a ten year minimum mandatory. Mr. Parramore was sentenced to 15 years on two other counts.

After the Supreme Court issued its decision in Graham v. Florida, 130 S. Ct. 2011 (2010), the trial court, Judge Catherine Combee, resentenced Mr. Parramore to 40 years in prison on the burglary of a dwelling with assault and with a firearm and sexual battery with a firearm convictions (with a 10 year minimum mandatory), and a concurrent 30-year sentence on the robbery with a firearm conviction. The trial court ordered these three sentences to run concurrent with each other, but consecutive to the 15 year sentences on other charges, totaling a 55-year sentence. Mr. Parramore's 55-year sentence remains the functional equivalent of a life sentence; therefore, this 55-year sentence

violates both the Eighth Amendment and article 1, section 17, of the Florida Constitution.

In Graham, the Court held that the "State must ... give defendants like Graham some **meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.**" 130 S. Ct. 2011 at 2030 (emphasis added). The Court found that "because juveniles have lessened culpability they are less deserving of the most severe punishments." Id. at 2026 (citing Roper v. Simmons, 543 U.S. 551, 569 (2005)). Also, "[j]uveniles are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults." Id. (quoting Roper, 543 U.S. at 570.).

In this case, Mr. Parramore's 55-year sentence does not provide Mr. Parramore with a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." An African American male born in 1990 (Mr. Parramore was born in 1991) has a life expectancy at birth of 64.5 years. Nat'l Center for Health Statistics, U.S. Dep't of Health and Human Services, Health, United States, 2011: With Special Feature on Socioeconomic Status and Health 108-109 (2012), available at <http://www.cdc.gov/nchs/data/hus/hus12.pdf#018>. Therefore, without any opportunity to demonstrate maturity and rehabilitation, Mr. Parramore will spend the majority of his life in prison. Further,

Mr. Parramore is not eligible for statutory gain time while serving the first 10 years of his sentence. See § 775.087(2)(b), Fla. Stat. (1999) ("Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence."). For Mr. Parramore, this means he would be scheduled for release beyond his life expectancy. A sixteen year old Mr. Parramore would serve the first 10 years as a minimum mandatory, and would serve 85% of the remaining 45 years (38.25 years), totaling 48.25 years, placing him eligible for release at age 64.

The Second District improperly distinguished this case from the First District's Adams decision. Express and direct conflict exists between the Adams decision and the Second District's Parramore decision. Discretionary review is warranted.

## ISSUE II

THIS COURT HAS CONFLICT JURISDICTION TO  
ACCEPT THE INSTANT CASE PURSANT TO JOLLIE V.  
STATE, 45 SO. 2D 418 (FLA. 1981).

This Court has conflict jurisdiction pursuant to the decision in Jollie v. State, 45 So. 2d 418 (Fla. 1981), wherein this Court held that an opinion from a district court which cited as controlling authority a decision currently pending in the Florida Supreme Court was prima facie express conflict allowing this Court to exercise its jurisdiction.

In Parramore, the Second District issued a citation per curiam affirmance, citing controlling authority Walle v. State, 99 So. 3d 967 (Fla. 2d DCA 2012). Walle is currently pending in this Court. See Persaud v. State, 838 So. 2d 529, 531-32 (Fla. 2003) (holding that "the Court does not have jurisdiction to review per curiam decisions of the district court of appeal that merely affirm with citations to cases not pending review in this Court.").

The Walle court also cited to Henry v. State, 82 So. 2d 1084 (Fla. 5th DCA), review granted, 107 So. 3d 405 (Fla. 2012), relying on the Fifth District's reasoning in affirming Mr. Parramore's lengthy terms-of-years sentences. Henry is also pending in this Court.

Adams, Walle, and Henry are all pending in this Court. However, the list of cases affected by this issue is much greater. Every district court has several pending cases on this issue, and many cases are pending in this Court. Accordingly, this Court has jurisdiction to review this case under the criteria established in Jollie because the decisions of Walle, Adams, and Henry, as well as many others, are currently pending before this Court.

CONCLUSION

In light of the foregoing arguments, Petitioner respectfully requests this Court accept jurisdiction and review this case.

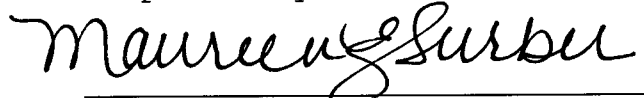
CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to the Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this 23rd day of October, 2014.

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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