IN THE SUPREME COURT OF FLORIDA

JUAN C. CASIANO,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC19-1622

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent was the Prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for Indian River County, Florida. Petitioner was Appellant and Respondent was Appellee in the District Court of Appeal of Florida, Fourth District.

In this brief, the parties shall be referred to as they appear before this Honorable Court, except that Respondent may also be referred to as the State.

"IB" refers to the Petitioner's Initial Brief on the Merits. Respondent will use the same symbols as Petitioner (IB 1) when referring to the records in the Fourth District Court of Appeal and the Court Record, or "Certified Copies of Appeal Papers," filed with this Court.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's "Statement of the Case and Facts."

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeal did not err by determining that Petitioner's case is moot. On direct appeal, Petitioner argued that the trial court erred by making a danger finding under subsection 775.082(10), Florida Statutes (2018) and sentencing him to time in Florida State prison. The State recognized in the trial court that this was error, because this Court held in *Brown v. State*, 260 So. 3d 147 (Fla. 2018) that the statute requiring the judge to make the danger finding was unconstitutional.

However, during the pendency of the appeal, Petitioner completed the prison portion of his sentence. Consequently, his challenge to that sentence became moot because a judicial decision on the merits could not provide him with any relief.

In the alternative, should this Court find the case not to be moot, the only proper remedy for Petitioner to challenge the prison sentence is for Petitioner to move to withdraw his negotiated plea and sentence pursuant to Florida Rule of Criminal Procedure 3.850.

ARGUMENT

The Fourth District Court of Appeal did not err by concluding that Petitioner's case was moot, but even if this Court finds that the Fourth District did err, the proper remedy is for Petitioner to move to withdraw his plea.

Standard of Review

The State agrees that the standard of review is de novo (IB 13).

Discussion

Petitioner argued in the first point of his direct appeal that the trial court erred when it, rather than a jury, found that he was a danger to the public under subsection 775.082(10), Florida Statutes (2018) and imposed a Florida State prison sentence (CR 82-92). *See Casiano v. State*, 280 So. 3d 105, 105 (Fla. 4th DCA 2019).

Petitioner argued that this was error based on this Court's opinion in *Brown v. State*, 260 So. 3d 147 (Fla. 2018), which was issued before the resolution of Petitioner's direct appeal. In *Brown*, this Court held "that subsection (10) violates the Sixth Amendment in light of *Apprendi* and *Blakely* based on its plain language requiring the court, not the jury, to find the fact of dangerousness to the public necessary to increase the statutory maximum nonstate prison sanction." *Id.* at 150.

I. This issue raised in Petitioner's direct appeal is moot.

Petitioner challenged the trial court's danger finding and his resulting prison sentence on direct appeal, but because he had completed his prison sentence while his appeal was pending (*see* CR 117-20), the Fourth District properly concluded his case is moot. The opinion states in relevant part:

> During this appeal, Casiano served his sentence and was released from prison. Casiano's appeal therefore is moot. *See Woods v. State*, 214 So. 3d 803, 804-05 & n.1 (Fla. 1st DCA 2017) (on reh'g en banc) (Makar, J., concurring in affirmance). In *Woods*, the First District issued an en banc per curiam affirmed decision with multiple concurring and dissenting opinions. Woods raised the same challenge to section 775.082(10) as Casiano and, like Casiano, Woods was released from prison before the en banc argument being scheduled. *Id.* at 804-05 (Makar, J., concurring in affirmance).

Casiano, 280 So. 3d at 106.

The State asserts that the Fourth District's decision is proper and consistent with this Court's recent disposition of a mootness issue raised in *Booker v. State,* No. SC18-752, 2019 WL 1434049 (Fla. Apr. 1, 2019)[1]. In that case, the petitioner, like Petitioner here, had challenged the constitutionality of his sentence imposed under subsection 775.082(10) and had completed his prison sentence before this Court could resolve the issue (*see* SC18-752, Petitioner's Initial Brief on the Merits, April

[1] This Court may take judicial notice of its own records. *See Foxworth v. Wainwright*, 167 So. 2d 868, 870 (Fla. 1964).

12, 2019, and Motion to Dismiss Petitioner's Initial Brief as Moot, Aug. 29, 2019). This Court accepted jurisdiction to address a certified question of great public importance: if a trial court's finding under subsection 775.082(10) is not harmless, what is the proper remedy? (SC18-752, Notice to Invoke Discretionary Jurisdiction, May 14, 2018; Petitioner's Initial Brief on the Merits, April 12, 2019).

Prior to oral argument, the respondent moved to dismiss the initial brief, arguing that petitioner had served his sentence and therefore the certified question of great public importance was moot (SC18-752, Motion to Dismiss Petitioner's Initial Brief as Moot, Aug. 29, 2019). This Court held the oral argument (*see* SC18-752 docket) and subsequently granted the motion to dismiss (SC18-752, order granting motion to dismiss, Feb. 11, 2019); *see also Gaymon v. State,* 288 So. 3d 1087, 1089 n.1 (Fla. 2020). In *Gaymon,* where this Court addressed the certified question raised in *Booker*, this Court stated:

> As explained in *Gaymon [v. State,* 268 So. 3d 222, 227 (Fla. 1st DCA 2019)], this issue was originally certified in *Booker v. State*, 244 So. 3d 1151 (Fla. 1st DCA 2018), *review granted*, No. SC18-752, 2019 WL 1434049 (Fla. Apr. 1, 2019). *Gaymon*, 268 So. 3d at 224. After accepting discretionary review of *Booker* pursuant to article V, section 3(b)(4) of the Florida Constitution, we accepted review of *Gaymon*, over which we also have jurisdiction because *Booker* remains pending in this Court. *See Jollie v. State*, 405 So. 2d 418, 420 (Fla. 1981). We

> elected to address the question of great public importance in Gaymon's case after being notified that Booker had completed his prison sentence.

Id.

Because Petitioner has completed his prison sentence like the petitioner in *Booker,* this Court must also dismiss the instant case.

Consistent with this Court's disposition in *Booker*, district courts of appeal have likewise concluded that when an appellant has completed his prison sentence, a challenge to that sentence is moot. *See, e.g., Brown v. State*, 616 So. 2d 1137, 1138 (Fla. 4th DCA 1993) (citing *Williams v. State*, 549 So. 2d 734 (Fla. 2d DCA 1989))("[A]ppellant contends the trial court erred when it sentenced him to a term of one year and one day for petit theft. Normally this argument would have merit; however, since appellant's sentences are concurrent and he has already served this term in prison, the issue is now moot."); *Miller v. State*, 996 So. 2d 954 (Fla. 1st DCA 2008)(dismissing appeal of order denying motion to correct illegal sentence where appellant had completed his sentence).

In an effort to overcome the District Court's finding of mootness, Petitioner claims there are "at least three collateral consequences that preclude his appeal from being dismissed as moot" (IB 20), which include: (A) his liability for costs of

incarceration and correctional costs (IB 20-25); (B) that Petitioner is still on probation and "subject to the sentence imposed upon him," and his probation could be reduced if he were to be resentenced (IB 25-28); and (C) there is the potential, as a result of the sentence in this case, for him to be prosecuted as a "prison releasee reoffender" ("PRR") based upon section 775.082(9)(a)1.(IB 28-37).

The State submits that a decision on the merits could not alter (A) and (C), and for this reason, the Fourth District properly concluded that Petitioner's case is moot. *See generally Godwin v. State,* 593 So. 2d 211, 212 (Fla. 1992) (emphasis added) ("An issue is moot when the controversy has been so fully resolved that **a judicial determination can have no actual effect**."). Petitioner has completed his sentence in a Florida State correctional facility pursuant to a negotiated plea agreement; the costs incurred from that prison sentence and the fact that he has been "release[d] from a state correctional institution"—relevant to the possibility of him being prosecuted under the PRR statute—cannot be undone.

Petitioner cites numerous cases to support his argument that the potential collateral consequences of his plea entitle him to have his case resolved on direct appeal (*see* IB 22-24, 27, 29). However, the cases he cites did not involve challenges to a prison sentence that was imposed based on a negotiated plea

agreement and where the sentence had been completed. Therefore, the cases are distinguishable[2] from the instant case. Regarding the potential of a future PRR sentence, the Court in *United States v. Jackson*, 523 F.3d 234 (3d Cir. 2008), cited by Petitioner (IB 25, n.6), stated: "the possible collateral consequence of a sentencing error impacting a future federal criminal conviction and sentence, has been discredited by the Supreme Court and other circuits." *Id.* at 240.

Because this case involved a negotiated plea, the potential collateral consequence Petitioner raises in (B) of him possibly getting a reduced probationary sentence (IB 27), is only a possibility if he moves to withdraw his plea. *See* Answer Brief, subsection "II."

II. <u>If this Court determines the case is not moot, the proper remedy is for Petitioner to move to withdraw his plea.</u>

Should this Court recede from its earlier decision to dismiss *Booker*, and find that Petitioner's case is not moot, the

[2] *Brown v. State*, 128 So. 3d 964 (Fla. 2d DCA 2013) (IB 23) had a negotiated plea underlying the case. *See id.* at 965. However, the issue on the appeal was a double jeopardy issue related to the trial court's resentencing order, which was entered after the appellant "committed a new law violation during the furlough he was granted before he was required to serve a ten-month jail term." *Id.* The issue did not relate to the initial sentence imposed. *United States v. Jackson*, 523 F.3d 234 (3d Cir. 2008) (IB 25) involved a plea agreement but not a negotiated sentence. Moreover, the Court noted that because the appellant was "currently serving a term of supervised release, and because her challenge is to whether that term of supervised release is reasonable," mootness was not at issue. *Id.* at 242.

proper remedy is for Petitioner to move to withdraw his plea, which the State argued in the trial court and the Fourth District Court of Appeal (SR1 at 143-44, SR2 157-58), (CR 109-110).

In his 3.800(b) motion to correct illegal sentence and in his initial brief on direct appeal, Petitioner had asked for the relief of a non-state prison sanction (SR1 76, SR2 81), (CR 84, 92). Petitioner has recognized in the Initial Brief that since the time of those pleadings, this Court announced in *Gaymon v. State*, 288 So. 3d 1087 (Fla. 2020) the remedy for when a trial court, rather than a jury, erroneously makes the danger finding (IB 6, n.6).

In *Gaymon*, this Court held "that the proper remedy for harmful error resulting from the court, not the jury, finding the fact of dangerousness under section 775.082(10) is to remand for resentencing with instructions to either impose a nonstate sanction of up to one year in county jail or empanel a jury to make the determination of dangerousness, if requested by the State." *Id.* at 1089-90 (footnote omitted).

Gaymon is not applicable here. *Gaymon* did not involve a negotiated plea agreement, like the instant case, and therefore the petitioner in *Gaymon* was not challenging a sentence from a negotiated agreement. Petitioner has a different remedy than the petitioner in *Gaymon*. *See generally Haynes v. State*, 106 So. 3d,

481 482 (Fla. 5th DCA 2013) ("But while Haynes sought relief under rule 3.800(a) to obtain correction of his sentence, he was actually challenging the terms of his plea agreement and the resulting convictions.").

Petitioner entered a partially negotiated plea to resolve his two cases. In exchange for the No Contest plea to each case, the State agreed that the trial court **could not sentence Petitioner to more than 18 months** in prison, whereas his **possible maximum sentence would have otherwise been 17 years in prison** (R1 32-34, 39; R2 31-33, 38).

Petitioner should not retain the benefit of his bargain while the State forfeits its own. Petitioner's illegal sentence was the result of a partially negotiated plea, therefore the proper remedy for the illegal sentence is for him to move withdraw his plea and vacate his judgment and sentence under Florida Rule of Criminal Procedure 3.850. *See Tucker v. State,* 174 So. 3d 485, 487 (Fla. 4th DCA 2015).

In *Tucker*, the appellant challenged a sentence that was imposed following the entry of a negotiated plea, like Petitioner. *See id.*, 174 So. 3d at 487. The Fourth District Court of Appeal stated:

> We agree with the trial court that this issue **is not cognizable in a rule 3.800(b) motion**, because the sentence was a result of a negotiated plea. **Thus, the real objection is to the plea agreement itself.** The remedy

> for an illegal sentence based upon a negotiated plea is to seek to withdraw the plea.

Id. (emphasis added) (citing *Haynes v. State*, 106 So. 3d 481 (Fla. 5th DCA 2013); *Dominguez v. State*, 98 So. 3d 198 (Fla. 2d DCA 2012)).

In *Haynes*, the Fifth District affirmed the trial court's order denying the appellant's motion to correct an illegal sentence, where the sentence was imposed as part of a negotiated plea agreement. *See Haynes*, 106 So. 3d at 482-83. The Fifth District stated:

> Haynes now complains the sentence he bargained for was illegal. His "right to challenge an illegal sentence is not waived by the fact that the sentence was the result of a negotiated plea." *Torbert v. State*, 832 So.2d 203, 205 (Fla. 4th DCA 2002); *accord Wheeler v. State*, 864 So.2d 492, 492 (Fla. 5th DCA 2004) ("[A]n illegal sentence cannot be imposed even as part of a negotiated plea agreement....")[.] **But while Haynes sought relief under rule 3.800(a) to obtain correction of his sentence, he was actually challenging the terms of his plea agreement and the resulting convictions.** *See Dominguez v. State*, 98 So.3d 198, 200 (Fla. 2d DCA 2012); *Nedd v. State*, 855 So.2d 664, 664 (Fla. 2d DCA 2003). **As the sentence was the product of a negotiated plea, the remedy is not to correct the illegal sentence, but rather a motion under Rule of Criminal Procedure 3.850 to set aside the plea, vacate the judgment and sentence, and reinstitute all charges pending against the defendant prior to entry of the plea.** *See Jolly v. State*, 392 So.2d 54, 56 (Fla. 5th DCA 1981) ("If the plea negotiation is not binding on the defendant, then it is not

> binding upon the state."). Thus, the current motion was properly denied. *Nedd*, 855 So.2d at 664; *Jolly*, 392 So.2d at 56; *see also Dominguez*, 98 So.3d at 201.

Id. at 482 (emphasis added); *cf. Forrester v. State*, 580 So. 2d 300, 301 (Fla. 5th DCA 1991) (finding that a defendant who was challenging a condition of his sentence that had already been completed was "entitled to an opinion vindicating his position that he was entitled to withdraw his plea" because the condition was not part of his plea agreement).

Like the appellants in *Tucker* and *Haynes*, Petitioner must move to withdraw his plea to challenge his illegal sentence. Although Petitioner entered partially negotiated pleas that provided for a sentencing cap and not fully negotiated pleas whereby he would have received an agreed upon specific sentence, the cited cases involving fully negotiated pleas still apply. Whether the sentence in a plea agreement is fully or partially negotiated, in both instances the parties bargain for and obtain benefits from the negotiation, and the trial court imposes a judgment and sentence pursuant to that negotiation. It would be unjust for Petitioner to simply have one portion of the agreement—the sentence—modified, when that sentence resulted from an agreement in which both sides made concessions and obtained benefits.

In summary, if this Court agrees with Petitioner that the Fourth District Court of Appeal erred by concluding his case is moot, the proper remedy is for Petitioner to move to withdraw his plea, not for him to receive the remedy announced in *Gaymon*. *See supra Tucker,* 174 So. 3d at 487 ("[T]he real objection is to the plea agreement itself. The remedy for an illegal sentence based upon a negotiated plea is to seek to withdraw the plea.").

Notably, as mentioned in *Haynes*, "[t]he withdrawal of a plea can have unintended consequences," in that a defendant may be exposed to, and may ultimately receive, a much greater sentence after withdrawing his plea than that imposed based on the negotiated plea agreement. *See Haynes,* 106 So. 3d at 482-83 (citing *Ciambrone v. State*, 93 So. 3d 1176, 1177 (Fla. 2d DCA 2012)).

CONCLUSION

The State respectfully requests this Court affirm the Fourth District Court of Appeal's decision below. If this Court finds that the case is not moot, this Court should find that the proper means for Petitioner to challenge his prison sentence is to move to withdraw his plea.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing is being served via the Florida Court's E-Filing Portal to Benjamin Eisenberg, Assistant Public Defender, 421 Third Street, West Palm Beach, FL 33401, at appeals@pd15.state.fl.us, beisenberg@pd15.state.fl.us, and gztaylor@pd15.state.fl.us, this 4th day of May, 2020.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,

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