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Court of Appeals
Division III
State of Washington
8/24/2018 8:00 AM**

NO. 36009-1-III

COURT OF APPEALS

**STATE OF WASHINGTON
DIVISION III**

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

SIMON CHARLES P. CRIBBS,

Defendant/Appellant.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	
CASES	ii
CONSTITUTIONAL PROVISIONS	ii
STATUTES	iii
OTHER AUTHORITIES	iii
ASSIGNMENTS OF ERROR	1
ISSUES RELATING TO ASSIGNMENTS OF ERROR	1
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
CONCLUSION	14
APPENDIX “A”	
APPENDIX “B”	
APPENDIX “C”	

TABLE OF AUTHORITIES

CASES

<i>Personal Restraint of Tobin</i> , 165 Wn.2d 172, 196 P.3d 670 (2008)	10
<i>Seattle v. Winebrenner</i> , 167 Wn.2d 451, 219 P.3d 686 (2009)	12
<i>State v. Cameron</i> , 80 Wn. App. 374, 909 P.2d 309 (1996)	10
<i>State v. Contreras</i> , 124 Wn.2d 741, 880 P.2d 1000 (1994).....	4
<i>State v. Harper</i> , 62 Wn. App. 69, 813 P.2d 593 (1991)	13
<i>State v. Jacobs</i> , 154 Wn.2d 596, 115 P.3d 28u1 (2005).....	12
<i>State v. Larkins</i> , 147 Wn. App. 858, 199 P.3d 441 (2008).....	8
<i>State v. Mehrabian</i> , 175 Wn. App. 678, 308 P.3d 660 (2013)	13
<i>State v. Munoz-Rivera</i> , 190 Wn. App. 870, 361 P.3d 182 (2015)	14
<i>State v. Olsen</i> , 180 Wn.2d 468, 325 P.3d 187 (2014).....	7
<i>State v. Shipp</i> , 93 Wn.2d 510, 610 P.2d 1322 (1980).....	8

CONSTITUTIONAL PROVISIONS

Const. art. I, § 3.....	9, 11
United States Constitution, Fourteenth Amendment	9, 11

STATUTES

RCW 9.94A.010(2)..... 11

RCW 9.94A.360(3)..... 10

RCW 9.94A.525..... 14

RCW 9.94A.525(3)..... 1, 3, 4, 10, 14

RCW 9.94A.589..... 13

RCW 9A.36.031..... 10

RCW 9A.76.020..... 9

RCW 9A.76.040..... 9

OTHER AUTHORITIES

Florida Code § 775.082 (3)(e) 10

Florida Code § 843.01..... 9

ASSIGNMENTS OF ERROR

1. Simon Charles P. Cribbs' offender score, which is based on out-of-state Florida convictions, was miscalculated by the sentencing court. The required comparability analysis, when viewed in light of RCW 9.94A.525(3), was erroneously applied considering the statutory language as a whole.

2. The sentencing court erred when it declined to treat Mr. Cribbs' November 21, 2003 convictions as the "same criminal conduct"

3. Scrivener's errors occurred in Paragraph 2.2 of the Judgment and Sentence and need to be remedied. (CP 267)

ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. When a person is erroneously sentenced for an offense in another state, which offense is equivalent to a class "C" felony in Washington, does the washout period commence on the date he would have been released in Washington or the date he was released in the other state following appeals and resentencing? (CP 202)

2. What is the correct interpretation of RCW 9.94A.525(3)?

3. Does a “same criminal conduct” analysis apply to out-of-state convictions?

4. Did a scrivener’s error occur in Paragraph 2.2 of the Judgment and Sentence relating to the date(s) inserted for prior criminal history items 3 and 4?

STATEMENT OF THE CASE

Mr. Cribbs was charged with five (5) offenses pursuant to an Information filed on March 7, 2018. The offenses included: second degree assault (DV), two (2) counts of fourth degree assault (DV), resisting arrest and felony harassment. (CP 1)

An Amended Information was filed on March 19, 2018 for the purpose of correcting the maximum punishment on Count IV. (CP 4)

Prior to trial Mr. Cribbs pled guilty to two (2) counts of fourth degree assault and resisting arrest. (CP 7)

A jury determined that Mr. Cribbs was not guilty of second degree assault; but guilty of the lesser degree offense of fourth degree assault (DV). He was also found guilty of felony harassment. (CP 14; CP 15; CP 17)

The State and Mr. Cribbs disputed his offender score. Sentencing memoranda were filed on April 26, 2018 and April 27, 2018. (CP 18; CP 29)

Mr. Cribbs' prior criminal history is from the State of Florida. The sentencing court conducted a comparability analysis and determined that his offender score was a six (6). (RP 29, ll. 10-24; RP 30, ll. 14-22; RP 33, ll. 6 to RP 34, l. 14; RP 34, ll. 15-24)

Judgment and Sentence was entered on May 1, 2018.

Mr. Cribbs filed his Notice of Appeal on May 2, 2018. (CP 279)

SUMMARY OF ARGUMENT

When the State seeks to use out-of-state convictions in calculating a defendant's offender score, the sentencing court is required to conduct a comparability analysis under the provisions of RCW 9.94A.525(3).

RCW 9.94A.525(3) states, in part: "Out-of-state convictions for offenses shall be classified according to the comparable **offense definitions and sentences** provided by Washington law." (Emphasis supplied.)

Mr. Cribbs contends that the sentencing court misconstrued the language of RCW 9.94A.525(3) and as a result his offender score has been miscalculated.

“It is the duty of this court to construe statutes so as to avoid rendering meaningless any word or provision.” *State v. Contreras*, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994).

Mr. Cribbs asserts that his correct offender score is two (2) as opposed to six (6).

In addition, the Judgment and Sentence contains a scrivener’s error as to his prior criminal history. Items 3 and 4 list a sentencing date of January 13, 2012. The correct sentencing date is November 29, 1993. (CP 63)

ARGUMENT

I. COMPARABILITY

The sentencing court, in analyzing RCW 9.94A.525(3) ignored a portion of the statutory language which is critical to Mr. Cribbs’ argument. The language under consideration is “**the comparable offense definitions and sentences provided by Washington law.**” (Emphasis supplied)

Mr. Cribbs conceded at the sentencing hearing that the convictions for burglary of a structure and dealing in stolen property did not wash out. They are both class “B” felonies comparable to the Washington felonies of second degree burglary and trafficking in stolen property first degree.

The sentencing court correctly ruled that the November 29, 1993 grand theft offense merged with burglary of a structure. However, it incorrectly concluded that the grand theft conviction under Cause Number 93-911 did not wash. It is a class “C” felony comparable to second degree theft in Washington.

It is the inclusion of all class “C” felonies which resulted in the miscalculation of Mr. Cribbs’ offender score. (See: Following Chart)

Offense Date	Offense	Conviction Date	Sentence	Class
05/05/93 (CP 43)	Burglary Structure Grand Theft	11/29/93	3 years	B
05/05-19/93 (CP 63)	Grand Theft Dealing Stolen Property	11/29/93	3 years 3 years	C C
08/31/97 (CP 106)	Battery Law Enforcement Officer	11/21/97	*Probation	C
10/20/98 (CP 117)	Escape	02/24/99	23.7 Months	Gross Mis- demeanor
08/31/02 (CP 178)	Battery Law Enforcement Officer	11/21/03	15 Years (Violent Ca- reer Crimi- nal)	C
08/31/02 (CP 178)	Resisting with Violence	11/21/03		C
09/18/13 (CP 240)	Battery			Gross Mis- demeanor
*Rev 02/24/99 (CP 112)	1 year jail		448 d Cr (CP 171)	

03/14/08 (CP 188)	Count I Sentence Reversed Non-Violent Career Criminal [2 nd District 07-3296 District COA - 2d District]		5 years - 06/27/08 (CP 204)	
08/08/09 (CP 217)	Count IV Sentence Reversed Non-Violent Career Criminal [2 nd District 08/4114] Non-qualified prior		8.5 years 11/06/09	
(CP 218)	Notice Habitual Offender			

The sentencing court determined that because Mr. Cribbs was not released from Florida custody until November 24, 2009 that he did not remain crime free in the community for the requisite five (5) year period due to a subsequent offense resulting in a conviction for battery. (CP 88; CP 240)

Mr. Cribbs contends that the above release date is not the critical point in time under the facts and circumstances of his case. Rather, the five (5) year period for the November 21, 2003 convictions should be treated as commencing the date of their commission (August 31, 2002) and ending on August 31, 2007.

Mr. Cribbs twice appealed his November 21, 2003 convictions for battery of a law enforcement officer and resisting arrest with violence. The Florida Court originally ruled that he was a “violent career criminal” and sentenced him to fifteen (15) years in prison.

Mr. Cribbs’ first appeal resulted in a determination that he was not a violent career criminal as to battery of a law enforcement officer. (Appendix “A”)

Mr. Cribbs’ second appeal resulted in a determination that he was not a violent career criminal as to resisting arrest with violence. (Appendix “B”)

Mr. Cribbs was resentenced on November 6, 2009 to eight point five (8.5) years in prison. As noted he was released on November 24, 2009. The reason for this sentence was a determination by the Florida court that Mr. Cribbs was an habitual offender. There is no comparable offense in the State of Washington for being an habitual offender. (CP 218)

“The State bears the burden of proving the existence and comparability of all out-of-state convictions.” *State v. Olsen*, 180 Wn.2d 468, 472, 325 P.3d 187 (2014).

Under the facts and circumstances the State failed to carry its burden of proof.

In conducting a comparability analysis, the court must engage in a two-part test.

First, a sentencing court compares the legal elements of the out-of-state crime with those of the Washington crime. If the crimes are so comparable, the court counts the defendant's out-of-state conviction as an equivalent Washington conviction. If the elements of the out-of-state crime are different, then the court must examine the undisputed facts from the record of the foreign conviction to determine whether the conviction was for conduct that would satisfy the elements of the comparable Washington crime.

State v. Larkins, 147 Wn. App. 858, 862-63, 199 P.3d 441 (2008).

Mr. Cribbs contests both the sentencing court's determination of comparable offenses and its offender score calculation. The critical issue revolves around the 2003 convictions and his release date from prison in Florida.

Statutes which define crimes must be strictly construed according to the plain meaning of their words to assure that citizens have adequate notice of the terms of the law, as required by due process. "Men of common intelligence cannot be required to guess at the meaning of the enactment." *Winters v. New York*, 333 U.S. 507, 515, 92 L. Ed.2d 840, 68 S. Ct. 665 (1947); *Seattle v. Pullman*, 82 Wn.2d 794, 797, 514 P.2d 1059 (1973).

State v. Shipp, 93 Wn.2d 510, 515-16, 610 P.2d 1322 (1980)

Mr. Cribbs asserts that his due process rights under the Fourteenth Amendment to the United States Constitution and Const. art. I, § 3 were denied as a result of the erroneous comparability analysis and offender score miscalculation.

Initially, Mr. Cribbs maintains that the conviction for resisting and/or obstructing a law enforcement officer with violence is not a comparable felony equivalent to a Washington felony offense.

Florida Code § 843.01 defines “resisting officer with violence to his or her person” as follows:

Whoever knowingly and willfully resists, obstructs, or opposes any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission; parole and probation supervisor; county probation officer; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree... .

Mr. Cribbs contends that the comparable offenses to Florida Code § 843.01 are resisting arrest and obstructing a law enforcement officer as those offenses are defined in RCW 9A.76.040 and 9A.76.020.

Obstruction of a law enforcement officer is a gross misdemeanor.
Resisting arrest is a misdemeanor.

Since Mr. Cribbs prevailed on his appeals in Florida the State argued that these offenses became comparable to third degree assault of a law enforcement officer in Washington. Third degree assault is a class “C” felony. RCW 9A.36.031. (RP 9, l. 8 to RP 11, l. 12)

A further complication ensues based upon the fact that the original Judgment and Sentence was held invalid on its face. The Judgment and Sentence entered by the Florida Court was in excess of its authorization under Florida Code § 775.082 (3)(e). (Appendix “C”)

A court may not order a sentence beyond that authorized by law. *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). Any such order is invalid on its face. *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 866-67, 50 P.3d 618 (2002).

Personal Restraint of Tobin, 165 Wn.2d 172, 175-76, 196 P.3d 670 (2008).

RCW 9.94A.525(3) (formerly RCW 9.94A.360(3)) was examined in *State v. Cameron*, 80 Wn. App. 374, 378, 909 P.2d 309 (1996). The *Cameron* Court stated at 378-79:

The statute’s purpose is to give an out-of-state conviction the same effect as if it had been rendered in-state, or, in alternative terms, to treat a person convicted outside the state as if he or she had been convicted in Washington. ...

...

To classify the comparable Washington offense, we ask whether it is a felony under Washington law and, if so, whether it is an A, B, or C felony.

It is Mr. Cribbs' position that the statute requires not only a comparability analysis with regard to the legal and factual prongs of the respective statutes; but also it must recognize that the Washington sentence is the controlling sentence insofar as the out-of-state conviction is concerned.

If the Washington sentence is not controlling in the comparability analysis, then the language contained in the statute "**the comparable offense definitions and sentences provided by Washington law**" becomes meaningless. (Emphasis supplied.)

One of the purposes of the Sentencing Reform Act (SRA) is set forth in RCW 9.94A.010(2) which states: "Promote respect for the law by providing punishment which is just."

Fairness and justice are bedrocks upon which the court system is founded. The due process clauses of the United States Constitution and the Washington State Constitution guarantee to a criminal defendant that he will be treated fairly and that justice will be administered in a fair and impartial manner. *See*: Fourteenth Amendment to the United States Constitution and Const. art 1 § 3.

Fairness and justice in Mr. Cribbs's case requires that he be sentenced with an offender score of 2. Mr. Cribbs arrives at this juncture of his argument based upon the fact that the period from August 31, 2007 (five (5) years from the date of arrest on November 21, 2003 convictions) to September 18, 2013 exceeds the five (5)-year statutory period for washouts. September 18, 2013 is the date of Mr. Cribbs last offense in the State of Florida. (CP 240)

It is Mr. Cribbs' position that the 5-year washout period for his Class "C" offenses began to run on the date he should have been released, to wit: August 31, 2007. Five (5) years from the date of the last offense. (CP 178)

Mr. Cribbs finds support for his position in *Seattle v. Winebrenner*, 167 Wn.2d 451, 462, 219 P.3d 686 (2009):

If after applying rules of statutory construction we conclude that a statute is ambiguous, "the rule of lenity requires us to interpret the statute in favor of the defendant against legislative intent to the contrary." *Jacobs*, [*State v. Jacobs*, 154 Wn.2d 596, 115 P.3d 28u1 (2005)] at 601 (citing *In re Post-Sentencing Review of Charles*, 135 Wn.2d 239, 249, 955 P.2d 798 (1998)). The rule states that **an ambiguous criminal statute cannot be interpreted to increase the penalty imposed.** *State v. Adlington-Kelly*, 95 Wn.2d 917, 920-21, 631 P.2d 954 (1981).

(Emphasis supplied.)

Finally, “[d]ifferent punishments for the same crime and same history cannot both be just.” *State v. Harper*, 62 Wn. App. 69, 78, 813 P.2d 593 (1991).

II. SAME CRIMINAL CONDUCT

As previously noted, the resisting with violence conviction accompanied a conviction of battery of a law enforcement officer. The same officer was involved on the one occasion and a “same criminal conduct” analysis is required. (CP 184)

RCW 9.94A.589 provides, in part:

...[I]f the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. ... “Same criminal conduct,” as used in this section, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim.

The two (2) offenses were committed in continuous contact with law enforcement. The same officer was involved. The time and place were the same. The intent was to prevent arrest.

“To determine whether a defendant’s intent changed, we analyze whether crimes are sequential or continuous.” *State v. Mehrabian*, 175 Wn. App. 678, 711, 308 P.3d 660 (2013).

III. SCRIVENER'S ERROR

“The remedy for a scrivener’s error in judgment and sentence forms is remand to the trial court for correction.” *State v. Munoz-Rivera*, 190 Wn. App. 870, 895, 361 P.3d 182 (2015).

CONCLUSION

The correct interpretation of RCW 9.94A.525 is that when conducting a comparability analysis for out-of-state convictions a sentencing court must not only apply the legal and factual analysis; but also a sentencing analysis.

If a defendant has been sentenced to a term of custody on an out-of-state conviction that exceeds the term that would have been imposed in the State of Washington, then the release date must be based upon when the individual would have been released by the State of Washington. Otherwise, the statutory language of RCW 9.94A.525(3) becomes meaningless.

Due process requires that Mr. Cribbs be given the benefit of a correct statutory interpretation, that his offender score be recalculated, and that the case be returned to the trial court for resentencing with an offender score of two (2).

Alternatively, if Mr. Cribbs' argument does not prevail, then his offender score should be reduced based upon a "same criminal conduct" analysis of the November 23, 2003 convictions.

DATED this 24th day of August, 2018.

Respectfully submitted,

s/ Dennis W. Morgan

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APPENDIX “A”

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

SIMON CRIBBS,)	
)	
Appellant,)	
)	
v.)	Case No. 2D07-3296
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed March 14, 2008.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Collier County; Frederick R. Hardt,
Judge.

CANADY, Judge.

Simon Cribbs appeals the summary denial of his motion filed pursuant to Florida Rule of Criminal Procedure 3.800(a). We affirm the postconviction court's denial of claim two without comment but reverse the denial of claim one and remand for resentencing.

Cribbs claimed that his sentence of fifteen years' prison with a ten-year mandatory minimum as a violent career criminal (VCC) on his conviction for battery on a law enforcement officer (BOLEO) is illegal because BOLEO is not a "forcible felony" that

qualifies for VCC sentencing. See § 775.084(1)(d)(1)(a), Fla. Stat. (2001) (stating that a "forcible felony" is subject to VCC sentencing); § 776.08, Fla. Stat. (2001) (defining "forcible felony" and listing offenses which constitute forcible felonies); § 784.07(2), Fla. Stat. (2001) (defining the offense of battery on a law enforcement officer). The postconviction court erroneously denied the claim, finding that Cribbs' offense qualified because there was evidence he used violence in its commission.

For an offense not specifically enumerated in section 776.08, the Florida Supreme Court has held that the use or threat of physical violence must be an essential element of the offense if it is to be considered a "forcible felony." State v. Hearns, 961 So. 2d 211, 215 (Fla. 2007) (citing Perkins v. State, 576 So. 2d 1310, 1313 (Fla. 1991)). The supreme court has also decided that "BOLEO is not a forcible felony under section 776.08 and should not [be] counted as a qualifying offense for VCC sentence enhancement" because one may commit the offense without the use or threat of violence. Hearns, 961 So. 2d at 219. Consequently, we reverse the denial of Cribbs' claim. Because BOLEO is a felony of the third degree pursuant to section 784.07, Florida Statutes (2001), and Cribbs' fifteen-year sentence exceeds the statutory maximum for this offense, we remand for resentencing on count one without the VCC enhancement.

Affirmed in part, reversed in part, and remanded.

WHATLEY and LaROSE, JJ., Concur.

APPENDIX “B”

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

SIMON CRIBBS,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D08-4114

Opinion filed August 28, 2009.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Collier County; Frederick R. Hardt,
Judge.

WHATLEY, Judge.

In a motion filed pursuant to Florida Rule of Criminal Procedure 3.800(a),
Simon Cribbs challenged his enhanced sentences as a violent career criminal (VCC).
We affirm the dismissal of claim one but hold that Cribbs is entitled to relief on claim
two.

Claim one of Cribbs' motion is identical to a claim raised in a prior rule
3.800(a) motion. He obtained relief on that claim pursuant to Cribbs v. State, 978 So.

2d 828 (Fla. 2d DCA 2008). The postconviction court correctly dismissed this portion of Cribbs' motion as moot.

In claim two, Cribbs challenges the VCC sentence imposed upon his conviction of resisting an officer with violence on the ground that he does not have three prior qualifying convictions as required for VCC sentence enhancement. See § 775.084(1)(d), Fla. Stat. (2002). This claim was previously denied and affirmed on appeal in Cribbs. Although this claim would typically be collaterally estopped, we are nevertheless compelled to correct a manifest injustice, as the State forthrightly concedes. See Cillo v. State, 913 So. 2d 1233, 1233 (Fla. 2d DCA 2005).

The record shows that the State offered a prior conviction of battery on a law enforcement officer (BOLEO) and two other prior convictions as predicates for VCC sentencing. However, BOLEO is not a qualifying offense for VCC sentence enhancement. State v. Hearns, 961 So. 2d 211, 215 (Fla. 2007). The record does not establish the existence of the requisite predicate felonies to qualify Cribbs as a VCC. Accordingly, we reverse the dismissal of this claim. See Molfetto v. State, 874 So. 2d 668, 669 (Fla. 2d DCA 2004). We remand for resentencing in which any legal sentence may be imposed. See Collins v. State, 985 So. 2d 985 (Fla. 2007); Molfetto v. State, 942 So. 2d 967 (Fla. 2d DCA 2006).

Affirmed in part, reversed in part, and remanded.

KELLY and CRENSHAW, JJ., Concur.

APPENDIX “C”

eLaws (<http://www.elaws.us>) | eCases (<http://www.ecases.us>) | Florida Administrative Code (<http://frules.elaws.us/>) |

Florida Statutes (Last Updated: March 4, 2015)
(<http://fl.elaws.us/law>)

- TITLE XLVI. CRIMES (<http://fl.elaws.us/law/titlexlv>)
 - CHAPTER 775. DEFINITIONS; GENERAL
 - PENALTIES; REGISTRATION OF CRIMINALS
 - (http://fl.elaws.us/law/titlexlv_chapter775)

SECTION 775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously

released from prison. (<http://fl.elaws.us/law/775.0823>)

Latest version.

(1)(a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 (<http://fl.elaws.us/law/921.141>) results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(b)1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 (<http://fl.elaws.us/law/782.04>) of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18

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TITLE XLVI
CRIMES
CHAPTER 775
DEFINITIONS; GENERAL
PENALTIES; REGISTRATION OF CRIMINALS
SECTION 775.082
Penalties; applicability of sentencing structures;
mandatory minimum sentences for certain reoffenders previously released from prison.
16.013

years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401 (<http://fl.elaws.us/law/921.1401>), the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a) ([http://fl.elaws.us/law/921.1402\(2\)\(a\)](http://fl.elaws.us/law/921.1402(2)(a))).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 (<http://fl.elaws.us/law/782.04>) of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401 (<http://fl.elaws.us/law/921.1401>), the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c) ([http://fl.elaws.us/law/921.1402\(2\)\(c\)](http://fl.elaws.us/law/921.1402(2)(c))).

mandatory
 minimum
 sentences
Cited by
Court
Cases:
 reoffenders
 previously
 None
 released
 from
 prison.%od%oahttj

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) ([http://fl.elaws.us/law/921.1402\(2\)\(a\)\)](http://fl.elaws.us/law/921.1402(2)(a))) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(2) In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment as provided in subsection (1). No sentence of death shall be reduced as a result of a determination that a method of execution is held to be unconstitutional under the State Constitution or the Constitution of the United States.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed before October 1, 1983, by a term of imprisonment for life or for a term of at least 30 years.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.
- 4.a. Except as provided in subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b) ([http://fl.elaws.us/law/800.04\(5\)\(b\)](http://fl.elaws.us/law/800.04(5)(b))), by:
- (I) A term of imprisonment for life;
 - or
 - (II) A split sentence that is a term of at least 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4) ([http://fl.elaws.us/law/948.012\(4\)](http://fl.elaws.us/law/948.012(4))).
- b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b) ([http://fl.elaws.us/law/800.04\(5\)\(b\)](http://fl.elaws.us/law/800.04(5)(b))), by a term of imprisonment for life.
5. Notwithstanding subparagraphs 1.-4., a person who is convicted under s. 782.04 (<http://fl.elaws.us/law/782.04>) of an offense that was reclassified as a life felony which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s.

921.1401 (<http://fl.elaws.us/law/921.1401>) and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s.

921.1402(2)(b)

([http://fl.elaws.us/law/921.1402\(2\)\(b\)](http://fl.elaws.us/law/921.1402(2)(b))).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s.

921.1402(2)(c)

([http://fl.elaws.us/law/921.1402\(2\)\(c\)](http://fl.elaws.us/law/921.1402(2)(c))).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b)

([http://fl.elaws.us/law/921.1402\(2\)\(b\)](http://fl.elaws.us/law/921.1402(2)(b)))

or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

6. For a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g) ([http://fl.elaws.us/law/787.06\(3\)\(g\)](http://fl.elaws.us/law/787.06(3)(g))), by a term of imprisonment for life. (b)1. For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by

statute, by imprisonment for a term of years not exceeding life imprisonment.

2. Notwithstanding subparagraph 1., a person convicted under s. 782.04 (<http://fl.elaws.us/law/782.04>) of a first degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life, which was committed before the person attained 18 years of age may be punished by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 (<http://fl.elaws.us/law/921.1401>) and finds that a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)

(b)

([http://fl.elaws.us/law/921.1402\(2\)](http://fl.elaws.us/law/921.1402(2))

(b)).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)

(c)

([http://fl.elaws.us/law/921.1402\(2](http://fl.elaws.us/law/921.1402(2))
(c)).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) ([http://fl.elaws.us/law/921.1402\(2](http://fl.elaws.us/law/921.1402(2)) (b)) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(c) Notwithstanding paragraphs (a) and (b), a person convicted of an offense that is not included in s. 782.04

(<http://fl.elaws.us/law/782.04>) but that is an offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 (<http://fl.elaws.us/law/921.1401>) and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review

NO. 36009-1-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	FERRY COUNTY
Plaintiff,)	NO. 18 1 00009 2
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
SIMON CHARLES P. CRIBBS,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 24th day of August, 2018, I caused a true and correct copy of the *BRIEF OF APPELLANT* and to be served on:

COURT OF APPEALS, DIVISION III
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Spokane, WA 99201

E-FILE

FERRY COUNTY PROSECUTOR'S OFFICE

Attn: Kathryn Isabel Burke

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Republic, WA 99166

HAND DELIVERED

s/ Dennis W. Morgan

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