

Third District Court of Appeal

State of Florida

Opinion filed October 14, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D24-2211

Lower Tribunal Nos. F07-38114A, F07-38222B, F07-38337A, F07-38787B

Renardo Scott,
Appellant,

vs.

State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Ramiro C. Areces, Judge.

Carlos J. Martinez, Public Defender, and Amy Weber, Assistant Public Defender, for appellant.

James Uthmeier, Attorney General, and David Llanes, Assistant Attorney General, for appellee.

Before FERNANDEZ, MILLER and LOBREE, JJ.

FERNANDEZ, J.

Renardo Scott appeals the trial court's order revoking probation and sentencing him to life in prison as a prison release reoffender ("PRR"). Upon review of the record, we affirm the revocation order and Scott's life sentence as a PRR.

"The legality of a sentence is a question of law, and thus, subject to de novo review. Similarly, our review of the constitutionality of a sentence is de novo." Simmons v. State, 273 So. 3d 116, 119 (Fla. 3d DCA 2019) (citation omitted).

The Eleventh Circuit sentenced Scott to a five-year term of probation, to begin after he served the ten-year minimum mandatory prison sentence imposed. Scott was released from his ten-year prison sentence in Miami-Dade on October 28, 2017. However, Scott continued to be imprisoned as he served his concurrent prison sentence in the unrelated criminal case imposed by Broward County until his release from prison on November 3, 2022. Scott's five-year term of probation then began to run. The State filed its probation violation affidavit on December 13, 2023.

The trial court found that Scott's imprisonment on the unrelated criminal case in Broward County tolled his probation until his release from prison on November 3, 2022. We affirm the trial court's determination as Scott's sentence is lawful because the commencement of his probationary period was properly tolled pending the completion of his incarceration on all sentences.

See § 948.012(1), Fla. Stat. (2007) (“The period of probation or community control shall commence immediately upon the release of the defendant from incarceration, whether by parole or gain-time allowances.” (emphasis added)); Lawson v. State, 969 So. 2d 222, 229 (Fla. 2007) (stating that the purpose of probation is rehabilitation, while the purpose of imprisonment is punishment); State v. Fiddemon, 301 So. 3d 243, 247-48 (Fla. 4th DCA 2020) (“[W]e conclude the 2010 case's two-year probation term was tolled as a matter of law until after the defendant had completed both the 2010 case's three-year prison term *and* the 2012 case's eight-year prison term. . . . [O]ur conclusion does not create an impermissible time gap between the 2010 case's three-year prison term and two-year probation term. . . . To hold that the defendant completed the 2010 case's probation term during the 2012 case's prison term would be inconsistent with the rehabilitative concept of probation which presupposes that the probationer is not in prison. If anyone is to be held responsible for the defendant having to serve the 2010 case's probation term after having completed the 2012 case's prison term, it is the defendant, who committed the offenses leading to the 2012 case's prison term.”); see also Schurman v. State, 847 So. 2d 569 (Fla. 1st DCA 2003); Porter v. State, 585 So. 2d 399 (Fla. 1st DCA 1991); Crawley v. State, 787 So. 2d 886 (Fla. 2d DCA 2001); Foster v. State, 889 So. 2d 951 (Fla. 5th DCA 2004); Brooks v.

State, 762 So. 2d 1011 (Fla. 5th DCA 2000); State v. Savage, 589 So. 2d 1016 (Fla. 5th DCA 1991).

Further, we find that the trial court did not err in finding that the State met its burden and designated Scott a PRR on all eligible convictions in all four of his cases. Because Scott qualified for PRR at the time of sentencing, which he does not dispute, it was proper for the trial court to impose PRR as a result of the revocation of his probation. See § 948.06(2)(b), Fla. Stat. (2024) (“If probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation or the offender into community control.”); Foulks v. State, 306 So. 3d 1178, 1185 (Fla. 3d DCA 2020) (“[A] sentencing after a revocation of probation is, for all intents and purposes, just a resentencing on the original offense.’ ‘The events which bring about a revocation open a new chapter in which the court ought to be able to mete out any punishment within the limits prescribed for the crime.’ A revocation of probation essentially brings Foulks back to the starting point of any sentence he was facing at the original sentencing hearing. Prior to Foulks’ original sentencing, the State had filed a notice to invoke sentencing as a PRR. As part of a negotiated plea, the State waived the PRR sentence. But, had Foulks rejected the plea agreement, the

PRR minimum mandatory sentence would have been on the table.” (internal citations omitted)); Duggans v. State, 432 So. 3d 671, 672 (Fla. 3d DCA 2026) (“Foulks provides that upon revocation of probation, the State may seek to have a defendant sentenced as a prison releasee reoffender (‘PRR’) pursuant to section 775.082, Florida Statutes, despite the State having initially waived the PRR sentence as part of a negotiated plea agreement with a defendant, if the State can establish the defendant qualified as a PRR at the time of his initial sentencing.”); see also Goodman v. Sec’y, Florida Dep’t of Corr., No. 3:23-CV-614-TJC-SJH, 2026 WL 1091006, at *4 (M.D. Fla. Apr. 22, 2026) (citing to Foulks as good law); Owens v. Sec’y Dep’t of Corr., No. 8:24-CV-717-WFJ-NHA, 2025 WL 1078949, at *6 (M.D. Fla. Apr. 10, 2025) (same).

Lastly, the trial court was correct in its assessment that the PRR determination is “an ministerial one,” which does not require jury findings. See Maye v. State, 368 So. 3d 531, 532 (Fla. 6th DCA 2023) (“[T]he date a defendant was released from prison or jail and the nature of the qualifying offense are ministerial in nature and thus do not require jury findings. See Robinson v. State, 793 So. 2d 891, 893 (Fla. 2001) (‘[P]roof to the jury of a defendant's release which subjects a defendant to a sentence under the [PRR] Act is not required.’).” (emphasis added)), aff’d, 436 So. 3d 416 (Fla. 2026); Duggans, 51 Fla. L. Weekly D731 (“Duggans further contends that, even if he was eligible for a PRR sentence after the trial court revoked his probation, his

mandatory life sentence must nevertheless be reversed because his eligibility for PRR status was determined by judicial factfinding, which violated his Sixth and Fourteenth Amendment rights as interpreted by the United States Supreme Court in Erlinger v. United States, 602 U.S. 821, 144 S.Ct. 1840, 219 L.Ed.2d 451 (2024). Without reaching the merits of this argument, we affirm Duggans' sentence based on the record before us because error, if any, was harmless beyond a reasonable doubt.”).

For the reasons stated, we affirm the revocation of Scott's probation and his sentence to life in prison as a PRR. Consistent with Judge Miller's recommendation in the concurring opinion, we certify conflict with Hill v. State, 403 So. 3d 505 (Fla. 1st DCA 2025).

Affirmed, conflict certified.

LOBREE, J., concurs.

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MILLER, J., concurring

I concur in the majority opinion but write separately to highlight the unresolved conflict between this court's decision in Foulks v. State, 306 So. 3d 1178 (Fla. 3d DCA 2020), and the First District Court of Appeal's decision in Hill v. State, 403 So. 3d 505 (Fla. 1st DCA 2025). The inconsistent holdings in these cases have resulted in vastly different outcomes for similarly situated defendants. I recognize that there is no command in the Equal Protection Clause that similarly situated defendants receive the same punishment in different appellate districts in the same state, but resolving this conflict will foster the lauded goal of greater uniformity. See United States v. Banuelos-Rodriguez, 215 F.3d 969, 977 (9th Cir. 2000) (“[A] ‘wide disparity’ between sentencing schemes of different jurisdictions does not violate equal protection, even where two persons who commit the same crime are subject to different sentences.” (citation omitted)); Gonzales v. Tombone, 132 F.3d 1455 n.1 (5th Cir. 1997) (rejecting claim that a circuit split denied the defendant “equal protection of the laws because prisoners in different circuits will be treated differently under the same Program Statement” as the claim “ignores the structure of our legal system whereby circuits can disagree over

statutory interpretation and the Supreme Court has the final authoritative decision on the legal dispute.”).

I

Renardo Scott was charged in four separate cases with armed robbery, armed burglary with an assault or battery, and a myriad of other offenses. In three of those cases, the State timely filed a notice of its intent to seek a prison releasee reoffender (“PRR”) sentence. See § 775.082(9)(a)1., Fla. Stat. (2007) (“‘Prison releasee reoffender’ means any defendant who commits, or attempts to commit [an enumerated felony] within three years after being released from a state correctional facility . . . following incarceration for an offense for which the sentence is punishable by more than [one] year in this state.”).

In 2008, Scott accepted a negotiated plea offer to close all his cases. He entered a plea of guilty, as charged, in exchange for an adjudication and ten years in state prison, followed by five years of reporting probation as a habitual felony offender.

The State waived PRR sentencing in exchange for the plea. The trial judge clarified this disclaimer, stating to Scott “[the] State is waiving that designation, but your record will start catching up to you, sir.” The State

presented no evidence that Scott qualified as a PRR, and Scott did not stipulate that he qualified for enhancement.

During the plea colloquy, the trial court further informed Scott, “Should you be found or should you violate the terms and conditions of your probation when you are out, whenever you get released, should you violate your probation you could still be looking at up to possibly life in the state penitentiary on all these cases.” Scott confirmed that he understood. At no time was he informed a life sentence would be mandatory upon a finding of violation.

After Scott was released from prison, the State filed a probation violation affidavit. On the day of the probation violation hearing, the prosecutor announced Scott was facing a mandatory life sentence because she intended to seek a PRR sentence on all four cases. Scott objected, arguing that any enhancement was subject to a jury determination. The trial court overruled the objection, and the State presented evidence that Scott qualified as a PRR. Scott again objected, claiming that the State had waived the enhancement, and no one told him at the time of the plea that he would be facing a mandatory life sentence if he violated his probation.

Scott was found in violation, and the trial court imposed the PRR mandatory life sentence on multiple counts. Scott filed a motion to correct

sentence, alleging, among other grounds, that the trial court erred in sentencing him as a PRR because the State waived that designation at his initial sentencing hearing, and the trial court's judicial factfinding of the PRR criteria violated the Sixth and Fourteenth Amendments to the United States Constitution, as interpreted in Erlinger v. United States, 602 U.S. 821, 834 (2024) ("Virtually 'any fact' that 'increase[s] the prescribed range of penalties to which a criminal defendant is exposed' must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)." (quoting Apprendi v. New Jersey, 530 U.S. 466, 490 (2000))). The trial court denied relief. This appeal ensued.

II

In Foulks, this court held that the State may seek a PRR sentence after the revocation of probation, even though the State waived it at the time of the original sentencing. 306 So. 3d at 1185. We relied on the general principle that, upon revocation, a trial court may impose any sentence which it might originally have imposed. See id. at 1184. The plain language of the prison releasee reoffender statute, section 775.082(9), Florida Statutes (2007), and the revocation of probation statute, section 948.06(2), Florida Statutes (2024), we reasoned, supports the proposition that proof of PRR status, even at a probation revocation hearing, divests the court of

sentencing discretion. Foulks, 306 So. 3d at 1183; see also § 775.082(9)(d)1., Fla. Stat. (“It is the intent of the Legislature that offenders previously released from prison or a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence who meet the criteria in paragraph (a) be punished to the fullest extent of the law”); § 948.06(2)(b), Fla. Stat. (“If probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation or the offender into community control.”).

We reaffirmed this holding in Duggans v. State, 432 So. 3d 671, 672 (Fla. 3d DCA 2026), observing “Foulks provides that upon revocation of probation, the State may seek to have a defendant sentenced as a prison releasee reoffender (‘PRR’) pursuant to section 775.082, Florida Statutes, despite the State having initially waived the PRR sentence as part of a negotiated plea agreement with the defendant, if the State can establish the defendant qualified as a PRR at the time of his initial sentencing.” Duggans, 432 So. 3d at 672.

But materially similar facts yielded the opposite result in Hill. There, the First District Court of Appeal invoked Mack v. State, 823 So. 2d 746, 750 (Fla. 2002), for the proposition that the failure to seek an enhancement at the original sentencing hearing precludes the State from later seeking that enhancement. See Hill, 403 So. 3d at 506–07. Mack held that a trial court is prohibited from imposing a habitual felony offender sentence for the first time following a probation revocation. See 823 So. 2d at 750. The Florida Supreme Court explained,

[h]ere, although Mack qualified as a habitual offender, the sentencing court did not impose a habitual offender sentence; rather, it placed Mack on probation. Nothing in the record indicates that Mack was to serve his probation as a habitual offender or that he was on notice that he would be treated as such if his probation was revoked. Thus, while probation is technically not a sentence, under the reasoning in King, it clearly qualifies as “a more lenient sentence than that required by the habitual felon statute.” By virtue of placing Mack on probation the sentencing judge made an up-front determination that an enhanced sentence was not necessary for the protection of the public. Once this decision was made and Mack was not given a habitual offender sentence at the original sentencing hearing, the habitualization process was completed, and he could not thereafter be sentenced as a habitual offender upon revocation of his probation.

Id. at 749–50 (quoting King v. State, 681 So. 2d 1136, 1139 (Fla. 1996)).

Seeing a distinction without a difference between the two scenarios, the Hill court held that where the State waived and did not prove PRR eligibility and “did not make any explicit statement at the original sentencing

hearing about maintaining the ability to seek a PRR sentence upon revocation,” the availability of the enhanced sentence “expired” once the trial court imposed a guidelines sentence. 403 So. 3d at 507. Then-Judge Tanenbaum specially concurred, concluding that because the State did not prove PRR eligibility up front, the enhanced sentence could not have been imposed at the original sentencing hearing. See id. at 507–08 (Tanenbaum, J., concurring). The sentencing guidelines thus controlled at both the original hearing and the revocation hearing. As he explained, “[t]he State cannot change this by then trying to prove PRR after the fact, after the original sentence was imposed and served—and have it apply *nunc pro tunc* to qualify Hill for the enhanced sentence.” Id. at 508. Moreover, in the wake of Erlinger, “imposition of a PRR sentence, originally or after revocation—without a jury determination of the qualifying facts beyond a reasonable doubt—might also now be constitutionally dubious.” Id. at 508 n.*.

Here, Scott’s mandatory life PRR sentences were authorized under Foulks but impermissible under Hill. Because Foulks and Hill reach the opposite result on controlling facts which are virtually identical, their holdings should be examined to ensure interdistrict consistency.