

IN THE SUPREME COURT OF FLORIDA

Case No. SC19-1341

ADVISORY OPINION TO GOVERNOR RE: IMPLEMENTATION OF AMENDMENT 4, THE VOTING RESTORATION AMENDMENT

BRIEF OF INTERESTED PARTY ADAM RICHARDSON

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STATEMENT OF INTEREST

Florida Rule of Appellate Procedure 9.500(b)(2) states that, if the Court determines that the Governor has submitted a proper request for an advisory opinion, “the court shall permit, subject to its rules of procedure, interested persons to be heard on the questions presented through briefs, oral argument, or both.” *See also* Sup. Ct. Manual Internal Operating P. § II.H.1. (rev. Sept. 21, 2016) (in part: “If the Court decides the question is answerable, the Court permits briefs from all interested parties....”).

I voted to approve Amendment 4 in the 2018 midterm election. I have an interest in the amendment being properly implemented.

SUMMARY OF THE ARGUMENT

Amendment 4 automatically restores some convicted felons' voting rights "upon completion of all terms of sentence including parole or probation." The Governor has asked which financial obligations are a "term[] of sentence."

In the interpretation of a citizen-backed constitutional amendment, it is presumed the voters knew the law that existed at the time they approved it. Here, that law included the Florida Rules of Criminal Procedure, the Court-mandated forms therein, and relevant statutes that give the rules and forms context.

As the Governor and Legislature understand, only those items that are within the sentencing document or order are a term of sentence. The rules, forms, and statutes establish that "all terms of sentence" means, in cases of imprisonment or split sentence, only those fines authorized by Florida Statutes § 775.083. In cases of only probation or community control, there are no financial obligations that are a "term[] of sentence."

The Legislature passed, and the Governor signed, legislation that purported to implement Amendment 4. But Amendment 4 is self-executing and requires no implementing legislation. The new statute conflicts with Amendment 4 because it expands what financial obligations are considered a term of sentence that a convicted felon must satisfy for his or her right to vote to be automatically restored. To ensure the proper implementation of Amendment 4, the statute must give way.

ARGUMENT

“COMPLETION OF ALL TERMS OF SERVICE” IN AMENDMENT 4 ENCOMPASSES ONLY FINES AUTHORIZED BY FLORIDA STATUTES § 775.083 IN CASES OF IMPRISONMENT AND SPLIT SENTENCES, AND IN CASES OF ONLY PROBATION AND COMMUNITY CONTROL, NO FINANCIAL OBLIGATIONS.

Approved by Florida voters on November 6, 2018, Amendment 4 amended article VI, § 4(a), of the Florida Constitution, to read as follows:

[A]ny disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon *completion of all terms of sentence* including parole or probation.

(Emphasis added.)

The Governor has asked the Court “whether ‘completion of all terms of sentence’ encompasses financial obligations, such as fines, fees[,] and restitution ... imposed by the court in the sentencing order.” Letter from Ron DeSantis, Governor of Florida, to Charles T. Canady, Chief Justice of the Supreme Court of Florida (Aug. 9, 2019).

A. Interpretation of the constitution and citizen-backed amendments.

The Governor’s question asks for the interpretation of a constitutional provision. To start, the Constitution of the State of Florida places limits on legislative power. *State v. Bd. of Pub. Instruction for Dade Cnty.*, 170 So. 602, 606 (Fla. 1936). The very first provision in the Constitution states, in part: “All political power is inherent in the people.” Fla. Const. art. I, § 1. The people of the State of Florida can

amend the Constitution through the initiative process. *See* Fla. Const. art. XI, § 3. As the Constitution says, “The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people....” *Id.*

Well-established rules govern the interpretation of citizen-backed constitutional amendments. The Court restated these rules as follows:

[I]t is our duty to discern and effectuate the intent and objective of the people. *In re Advisory Opinion to the Governor*, 243 So. 2d 573 (Fla. 1971); *State ex rel. McKay v. Keller*, 140 Fla. 346, 191 So. 542 (1939). The spirit of the constitution is as obligatory as the written word. *Amos v. Matthews*, 99 Fla. 1, 126 So. 308 (1930). The objective to be accomplished and the evils to be remedied by the constitutional provision must be constantly kept in view, and the provision must be interpreted to accomplish rather than to defeat them. *State ex rel. Dade County v. Dickinson*, 230 So. 2d 130 (Fla. 1970). A constitutional provision is to be construed in such a manner as to make it meaningful. A construction that nullifies a specific clause will not be given unless absolutely required by the context. *Gray v. Bryant*, 125 So. 2d 846 (Fla. 1960).

We may glean light for discerning the people’s intent from historical precedent, from the present facts, from common sense, and from an examination of the purpose the provision was intended to accomplish and the evils sought to be prevented. *In re Advisory Opinion to the Governor*, 276 So. 2d 25 (Fla. 1973). Furthermore, we may look to the explanatory materials available to the people as a predicate for their decision as persuasive of their intent. *Williams v. Smith*, 360 So. 2d 417 (Fla. 1978); *In re Advisory Opinion to the Governor*, 343 So. 2d 17 (Fla. 1977). Further, an interpretation of a constitutional provision which will lead to an absurd result will not be adopted when the provision is fairly subject to another construction which will accomplish the manifest intent and purpose of the people. *City of Miami v. Romfh*, 66 Fla. 280, 63 So. 440 (1913).

Plante v. Smathers, 372 So. 2d 933, 936 (Fla. 1979).

This brief focuses on a different rule. “The rules used in construing statutes are in general applicable in construing the provisions of a Constitution.” *State ex rel. McKay v. Keller*, 191 So. 542, 545 (Fla. 1939). One such rule is “the Legislature is presumed to know the existing law when a statute is enacted.” *Collins Inv. Co. v. Metro. Dade Cnty.*, 164 So. 2d 806, 809 (Fla. 1964), *superseded by statute on other ground as stated in Adler-Built Indus. v. Metro. Dade Cnty.*, 231 So. 2d 197, 198 (Fla. 1970). There is no reason why that principle should not apply here: that the people of Florida are presumed to know the existing law when they adopt a constitutional amendment. *See Plante*, 372 So. 2d at 938 (“This statutory provision was in effect at the time the people ratified article II, section 8, and it served as a reasonable reference for the meaning of the term ‘candidate.’”); *Fla. Dep’t. of Revenue v. City of Gainesville*, 918 So. 2d 250, 264 (Fla. 2005) (“This determination is consistent with the principle that the Legislature ‘is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed,’ which is equally applicable on the constitutional level.” (citations omitted)).

B. The meaning of Amendment 4’s “all terms of sentence.”

The meaning of “all terms of sentence” can be found in Florida law as it existed when voters approved Amendment 4—specifically, the Florida Rules of Criminal Procedure, the forms included therein, and relevant statutes that give the rules and forms context.

The Florida Rules of Criminal Procedure approved by this Court provide the following definition of “sentence”:

The term sentence means the pronouncement by the court of the penalty imposed on a defendant for the offense of which the defendant has been adjudged guilty.

Fla. R. Crim. P. 3.700(a) (“Sentence Defined”). Subsection (b) (“Pronouncement and Entry”) reads in part: “Every sentence or other final disposition of the case shall be pronounced in open court....”

Though not dispositive, it is noteworthy that the sponsor of Amendment 4, the Legislature, and the Governor all agree that “all terms of sentence” are found in a specific document:

- At the oral argument on the amendment’s ballot placement, the sponsor’s counsel was asked whether “all terms of sentence” “would also include the full payment of any fines.” He answered “all terms means all terms *within the four corners*.” Tr. of Oral Argument at 4 (emphasis added), *Advisory Opinion to the Attorney Gen. Re: Voting Restoration Amendment*, 215 So. 3d 1202 (Fla. 2017), available at https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785_16-1981.pdf.
- In Florida Statutes § 98.0751(2)(a), which is the purported implementing legislation, the Legislature stated that “Completion of all terms of sentence’

means any portion of a sentence that is contained *in the four corners of the sentencing document...*” (Emphasis added.)

- In the letter to the Court requesting an advisory opinion, the Governor wrote: “I request your interpretation of whether ‘completion of all terms of sentence’ encompasses financial obligations, such as fines, fees[,] and restitution (‘legal financial obligations’ or ‘LFOs’) imposed by the court *in the sentencing order.*” Letter from Gov. DeSantis to Chief Justice Canady, *supra*, at 1 (emphasis added).

This Court has promulgated forms—i.e., documents and orders—related to judgment and sentence that “shall be used by all courts.” Fla. R. Crim. P. 3.986(a).

One of those forms, in subsection (d), is the “Form for Sentencing” used for imprisonment or split sentences. With respect to financial obligations, this sentencing form includes only one:

It Is The Sentence Of The Court That:

___ The defendant pay a fine of \$___, pursuant to section 775.083, Florida Statutes, plus \$ as the 5% surcharge required by section 938.04, Florida Statutes.

Thus, the Court-mandated “Form for Sentencing” includes only the discretionary fines authorized by Florida Statutes § 775.083. This is consistent with the language of that statute, specifically subsection (1): “A person who has been convicted of an offense other than a capital felony may be *sentenced* to pay a fine in

addition to any punishment described in s. 775.082....” Fla. Stat. § 775.083(1) (emphasis added). And it is clear that these statutory fines are a part of the sentence. *See also* William Burgess III, *Sentencing* § 1:70 (2018-2019 ed.) (“A ‘fine’ is a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime.” (footnote omitted)).

But the form in Rule 3.986(d) does not include costs and fees, nor fines authorized or required by other statutes.¹ The Court has prescribed a separate document for those. *See* Fla. R. Crim. P. 3.986(c) (“Form for Charges, Costs, and Fees,” which provides: “CHARGES/COSTS/FEES[:] The defendant is hereby ordered to pay the following sums: [Insert list of mandatory fines, discretionary fines, and restitution, if any.]” (first brackets added)). That also is consistent with statutory law. For example, § 775.083(2) provides that, “***In addition to*** the fines set forth in subsection (1), court costs shall be assessed and collected....” (Emphasis added.) Unlike subsection (1), subsection (2) does not include costs as a part of the sentence, but in addition to it. Indeed, one commentator has written: “In the criminal context, court costs are mandatory, non-punitive civil remedies.” Burgess, *Sentencing* § 1:71.

¹ *See, e.g.*, Fla. Stat. § 316.193 (title: “Driving under the influence; penalties.”); Fla. Stat. § 893.135 (title: “Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.”).

Accordingly, as to imprisonment or split sentences, the sentencing forms establish that only the fines authorized by § 775.083 are a financial obligation that is a term of sentence.

There are two other sentencing forms. Neither the “Form for Order of Probation” in Rule 3.986(e) nor the “Form for Community Control” in Rule 3.986(f) includes any blanks for fines, costs, or fees. Again, costs and fees are provided for in the Rule 3.986(c) form. When the sentence is only probation or only community control—so the Rule 3.986(d) form is not used at all—it appears that all fines are set out in the costs and fees form.

None of the sentencing forms include restitution. Like costs and fees, the Court has prescribed a separate document for restitution. *See* Fla. R. Crim. P. 3.986(g) (“Form for Restitution Order”). While case law refers to restitution as a criminal sanction,² the sentencing form’s exclusion of restitution is consistent with statutory law. Under Florida Statutes, restitution is provided as something “In addition to any punishment.” Fla. Stat. § 775.089(1)(a). That is, restitution is not punishment—a penalty—itsself. Restitution is not, therefore, a term of sentence. This may

² *See, e.g., Spivey v. State*, 531 So. 2d 965, 967 (Fla. 1988) (“Unlike civil damages, restitution is a criminal sanction. The purpose of restitution is not only to compensate the victim, but also to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system.” (citation omitted)); *see also* Burgess, *Sentencing* § 10:3 (“Restitution, as encompassed in the restitution statutes of Florida and other states, is a blend of civil and criminal law concepts, but is clearly not intended to be the equivalent of a civil award.”).

sound severe, but after a felon leaves the control of the Department of Corrections, most restitution amounts are converted to civil liens, which, statutory law makes clear, also is not punishment. *See Fla. Stat. § 960.29* (“This civil restitution lien act rests upon the principle of remediation and not punishment, which is meted out by criminal sanctions afforded by law.”).

In sum, the Florida law that existed at the time voters approved Amendment 4 establishes that, in cases of imprisonment or split sentences, only § 775.083 fines are a “term[] of sentence” and, in cases of only probation or community control, no financial obligations are a “term[] of sentence.”

C. The Court cannot consider the statements of the sponsor’s attorney at the oral argument on ballot placement.

In interpreting Amendment 4, the Governor and others have placed heavy emphasis on the statements of the attorney for the amendment’s sponsor during oral argument on Amendment 4’s ballot placement. *See, e.g., Letter from Gov. DeSantis to Chief Justice Canady, supra*, at 1-2.

The attorney told the Court that what needed to be completed were “all matters, anything that a judge puts in a sentence.”³ Asked whether “it would also include the full payment of any fines,” the attorney answered: “Yes, sir. Yeah, all terms

³ *See* Transcript of Oral Argument, *Advisory Opinion to the Attorney Gen. Re: Voting Restoration Amendment*, 215 So. 3d 1202 (Fla. 2017), available at https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785_16-1981.pdf.

means all terms within the four corners.” The attorney also was asked, “You said that terms of sentence include fines and costs. And it’s the, that’s the way it’s generally pronounced in criminal court. Would it also include restitution when it was ordered to a victim as part of the sentence?” The attorney said yes.

Per the above analysis, some of that is correct; some is not. To the extent the attorney’s statements are not correct, they cannot override the plain language of Amendment 4. “[T]he law is settled that when constitutional language is precise, its exact letter must be enforced and extrinsic guides to construction are not allowed to defeat the plain language.” *Fla. League of Cities v. Smith*, 607 So. 2d 397, 400 (Fla. 1992) (citing *State ex rel. West v. Gray*, 74 So. 2d 114 (Fla. 1954); *City of Jacksonville v. Cont’l Can Co.*, 151 So. 488 (Fla. 1933)).

D. Amendment 4 and § 98.0751.

Although the Governor explicitly asks for only an interpretation of “completion of all terms of sentence,” he also states that he “want[s] to ensure the proper implementation of Article VI, section 4[,] of the Florida Constitution and, if applicable, chapter 2019-162, Laws of Florida.” Letter from Gov. DeSantis to Chief Justice Canady, *supra*, at 4. Chapter 2019-162 is the legislation passed by the Legislature with the intention of implementing Amendment 4. It is codified at Florida Statutes § 98.0751.

To ensure the proper implementation of the amendment, it is necessary not just to interpret the amendment, but also to assess the role, if any, the new statute plays. This means determining whether Amendment 4 is self-executing. If it is, the Legislature may not enact implementing legislation. If it is not, the Legislature may.

The Court laid down the test for self-execution in *Gray v. Bryant*:

The basic guide, or test, in determining whether a constitutional provision should be construed to be self-executing, or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment. If the provision lays down a sufficient rule, it speaks for the entire people and is self-executing. The fact that the right granted by the provision may be supplemented by legislation, further protecting the right or making it available, does not of itself prevent the provision from being self-executing.

....

The will of the people is paramount in determining whether a constitutional provision is self-executing and the modern doctrine favors the presumption that constitutional provisions are intended to be self-operating. This is so because in the absence of such presumption the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people.

Gray v. Bryant, 125 So. 2d 846, 851-52 (Fla. 1960) (citations omitted).

Again, Florida law establishes that, in cases of imprisonment or split sentences, only § 775.083 fines are a “term[] of sentence” and, in cases of only probation or community control, no financial obligations are a “term[] of sentence. The language “all terms of sentence” lays down a sufficient rule.

Even though an amendment “is self-executing and does not require legislative enactment, the Legislature is still free to give force and effect to its provisions so long as it does not run afoul of the rights granted in the constitution.” *Fla. Hosp. Waterman Inc. v. Buster*, 984 So. 2d 478, 492 (Fla. 2008) (citing *Gray*, 125 So. 2d at 851). “When the provisions of statute collide with provisions of the Constitution the statute must give way.” *Henderson v. State*, 20 So. 2d 649, 651 (Fla. 1945); *see also Austin v. State ex rel. Christian*, 310 So. 2d 289, 293 (Fla. 1975) (“A statute enacted by the Legislature may not constrict a right granted under the ultimate authority of the Constitution.”)

The statute defines “completion of all terms of sentence” and imposes certain requirements regarding financial obligations:

(1) ... The voting disqualification does not terminate unless a person’s civil rights are restored pursuant to s. 8, Art. VI of the State Constitution ... if the person has not completed all terms of sentence, as specified in subsection (2).

(2) For purposes of this section, the term:

(a) “Completion of all terms of sentence” means any portion of a sentence that is ***contained in the four corners of the sentencing document***, including, but not limited to:

....

5.a. Full payment of ***restitution*** ordered to a victim by the court ***as a part of the sentence***. ...

b. Full payment of ***finest or fees*** ordered by the court ***as a part of the sentence*** or that are ordered by the court as a condition of any form of supervision, including, but not limited to,

probation, community control, or parole.

c. The financial obligations required under sub-subparagraph a. or sub-subparagraph b. include only the amount specifically ordered by the court *as part of the sentence* and do not include any fines, fees, or costs that accrue after the date the obligation is ordered as a part of the sentence.

....

e. Financial obligations required under sub-subparagraph a. or sub-subparagraph b. are considered completed in the following manner or in any combination thereof:

[Provisions omitted.]

A term required to be completed in accordance with this paragraph shall be deemed completed if the court modifies the original sentencing order to no longer require completion of such term. *The requirement to pay any financial obligation specified in this paragraph is not deemed completed upon conversion to a civil lien.*

(Emphasis added.)

In § 98.0751, the Legislature stated that “‘Completion of all terms of sentence’ means any portion of a sentence that is contained in the four corners of the sentencing document....” § 98.0751(2)(a).

In § 98.0751(2)(a)5., the Legislature addressed financial obligations. Per the Legislature, financial obligations include “restitution ordered to a victim by the court as a part of the sentence” and “fines or fees ordered by the court as a part of the sentence or that are ordered by the court as a condition of any form of supervision, including, but not limited to, probation, community control, or parole.”

As far as financial obligations go, however, the amendment language “all terms of sentence” means, in cases of imprisonment or split sentences, fines authorized by § 775.083 and, in cases of only probation or community control, nothing. Amendment 4 restores a convicted felon’s voting rights if he or she has paid the fines the court ordered in the sentencing document, if any.

But § 98.0751 modifies Amendment 4 to restore voting rights only if the convicted felon has paid the fines *and* fees and costs *and* restitution, apparently no matter in what document those items are found.⁴ Not only does the statute modify the plain language of the amendment, but it imposes significant additional burdens on convicted felons. *See* Lawrence Mower & David Ovalle, *How much will regaining the right to vote cost Florida felons? It could be a lot.*, MiamiHerald.com, Mar. 21,

⁴ The statute is internally inconsistent. “[I]n the four corners of the sentencing document” is very restrictive language, in contrast to the expansive view of the meaning of financial obligations the Legislature takes elsewhere in the statute.

“Four corners” is language of strict limitation. It signifies that the material to be considered is one or more pieces of paper that constitute one document. *Cf. Pizzi v. Cent. Bank & Trust Co.*, 250 So. 2d 895, 897 (Fla. 1971) (in determining whether a complaint states a cause of action: “The court ‘must confine itself strictly to the allegations within the four corners of the complaint.’” (quoting *Kest v. Nathanson*, 216 So. 2d 233, 235 (Fla. 4th DCA 1968))).

“The” also is language of limitation. “‘The’ is a definite article ‘used as a function word with a noun modified by an adjective or by an attributive noun to limit the application of the modified noun to that specified by the adjective or the attributive noun <[the] right answer>.’” *Golf Scoring Sys. Unlimited v. Remedio*, 877 So. 2d 827, 829 (Fla. 4th DCA 2004) (quoting *Webster’s New Collegiate Dictionary* 1199 (1980 ed.)).

2019, <https://www.miamiherald.com/news/politics-government/state-politics/article228192699.html>.

Section 98.0741's provisions on financial obligations "run afoul of the rights granted in the constitution." *Buster*, 984 So. 2d at 492. To ensure proper implementation of Amendment 4, this legislation must give way to the amendment's plain meaning.

CONCLUSION

The Governor's question is "whether 'completion of all terms of sentence' encompasses financial obligations, such as fines, fees[,] and restitution ... imposed by the court in the sentencing order." I respectfully submit to the Court that, in cases of imprisonment or split sentences, "all terms of sentence" means, as to financial obligations, only those fines authorized by § 775.083; and in cases of only probation or community control, there are no financial obligations that are a "term[] of sentence."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished to all counsel of record via the Florida Courts E-Filing Portal on September 18, 2019.

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CERTIFICATE OF TYPE SIZE & STYLE

I hereby certify that the type size and style of the Brief of Interested Party Adam Richardson is Times New Roman 14pt.

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