

WENDY W. BERGER
DISTRICT JUDGE



DISTRICT COURT OF APPEAL
FIFTH DISTRICT
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January 24, 2019

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington DC 20510-6050

Dear Chairman Graham,

I have reviewed the questionnaire submitted to the Senate Judiciary Committee on September 12, 2018, in connection with my nomination to the United States District Court for the Middle District of Florida. Incorporating the additional information listed below, I certify that the information contained in these documents is, to the best of my knowledge, true and accurate:

Question 12d.

December 3, 2018, Administration of the Oath of Office, St. Augustine City Commission Meeting, St. Augustine, Florida. I administered the oath of office to newly elected St. Augustine Mayor, Nancy Shaver, and newly elected St. Augustine City Commissioners, Nancy Sikes-Kline and John Valdes. I have no notes, transcripts, or recordings. The address of the St. Augustine City Commission is 75 King Street, St. Augustine, Florida 32085.

Question 13b.

Purdy v. State, 43 Fla. L. Weekly D2323 (Fla. 5th DCA October 12, 2018).
Foley v. Azam, 43 Fla. L. Weekly D2362 (Fla. 5th DCA October 19, 2018) (Berger, J., dissenting).

Goersch v. City of Satellite Beach, 252 So. 3d 309, 313 (Fla. 5th DCA 2018) (Berger, J. dissenting).

Question 13f.

Purdy v. State, 42 Fla. L. Weekly D272 (Fla. 5th DCA Jan 27, 2017), quashed by, *State v. Purdy*, 252 So. 3d 723 (Fla. 2018).

Purdy, a juvenile at the time, was convicted in 1997 of first-degree murder, armed robbery, and armed carjacking. He was sentenced to life without parole for the murder, and to concurrent terms of 112.7 months for the armed robbery and armed carjacking convictions, both of which were ordered to run consecutive to his life sentence. In 2015, Purdy filed a motion to correct illegal sentence, arguing that his life sentence violated the United States Supreme Court decision in *Miller v. Alabama*, 567 U.S. 460 (2012). Notably, he did not challenge the sentences on the armed robbery and armed carjacking. The trial court granted relief and resentenced Purdy to 40 years on the murder conviction. The consecutive 112.7-month sentence was left intact. After Purdy filed a motion for a sentence review hearing pursuant to section 921.1402(2), Florida Statutes (2015), the trial court conducted a hearing and determined that Purdy was rehabilitated and fit to reenter society. Thereafter, it reduced Purdy's sentence on the murder to time served, followed by 10 years of probation. Because the trial court determined that it did not have jurisdiction to review the consecutively imposed sentences, Purdy was returned to prison to begin serving the concurrent 112.7-months sentence for the armed robbery and armed carjacking. On appeal, we reversed and remanded for the trial court to conduct another review hearing wherein it would be required to review Purdy's aggregate sentence, which included the sentence he received for the armed robbery and armed carjacking. We also certified the following question of great public importance: When a juvenile offender is entitled to a sentence review hearing, is the trial court required to review the aggregate sentence that the juvenile offender is serving from the same sentencing proceeding in determining whether to modify the offender's sentence based upon demonstrated maturity and rehabilitation? The majority opinion and certified question were authored by Judge Lambert and joined by Judge Orfinger. I dissented with the majority's conclusion that Purdy was entitled to a sentence review on the armed robbery and armed carjacking convictions. In my view, the 112.7-months sentence imposed for those offenses did not trigger a sentence review hearing under section 921.1402(2). The State appealed and the Florida Supreme Court reversed, concluding as I had in my dissent that Purdy was not entitled to a sentence review on the armed robbery and armed carjacking. The Supreme Court answered the certified question in the negative, concluding that the plain language of Florida's juvenile sentencing statutes does not provide for aggregation of sentences at judicial sentence review. On remand, we issued an

opinion affirming the sentence imposed by the trial court following the sentence review hearing, as well as the trial court's determination that it did not have the authority or discretion to modify Purdy's previously imposed 112.7-months sentences for armed robbery and armed carjacking. *See Purdy v. State*, 43 Fla. L. Weekly D2323 (Fla. 5th DCA October 12, 2018).

Question 14a.

The following cases were not assigned to me by the Clerk's office based on the filing of a Notice of Potential Conflict.

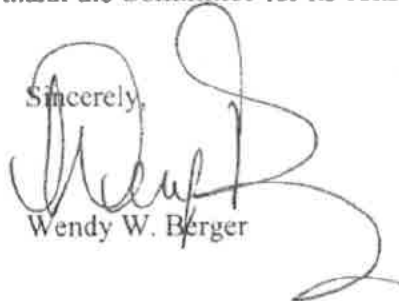
5D17-2808 *David Alan Shuey v. State of Florida*
5D17-3973 *Joseph Nichols, Jr. v. State of Florida*
5D18-60 *David Alan Shuey v. State of Florida*
5D18-598 *Vanacore Construction v. Osborn*
5D18-1349 *Szkutak v. Pereira*
5D18-2039 *Jason Todd Kalapp v. State of Florida*

Question 26(a)

On October 17, 2018, I testified before the Senate Judiciary Committee concerning my nomination. The recording of my testimony and copy of my Questions for the Record are available at:
<https://www.judiciary.senate.gov/meetings/10/17/2018/nominations>.

I have also transmitted a copy of my financial disclosure report and included an updated Net Worth Statement. I thank the Committee for its consideration of my nomination.

Sincerely,



Wendy W. Berger

Attachments

cc:
The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary