

In the Supreme Court of Florida

CASE NO. SC19-1341

IN RE: OPINION OF THE JUSTICES TO THE GOVERNOR REGARDING
IMPLEMENTATION OF AMENDMENT IV, THE VOTING RESTORATION AMENDMENT

**INITIAL BRIEF OF THE FLORIDA HOUSE OF REPRESENTATIVES,
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STATEMENT OF THE CASE

On November 6, 2018, Florida’s voters approved an amendment (known as Amendment 4) to Article VI, section 4, of the Florida Constitution. The amendment added language that, with two exceptions, removed a convicted felon’s voting disqualification and restored the felon’s voting rights “upon completion of all terms of sentence including parole or probation.” Art. VI, § 4, Fla. Const. (2019). On August 9, 2019, the Governor asked the Justices of this Court for their advice as to the meaning of “completion of all terms of sentence.” Specifically, the Governor asked whether that phrase “encompasses financial obligations,” and he mentioned fines, fees, and restitution as examples.

On August 29, 2019, this Court indicated that, in its discretion, the Justices would respond. The Court set a briefing schedule for interest parties.

SUMMARY OF ARGUMENT

The Florida Constitution disqualifies a convicted felon from voting. Now that the voters have approved Amendment 4, the Constitution also terminates any disqualification arising from the felony conviction and restores the felon's voting rights "upon completion of all terms of sentence including parole or probation." Art. VI, § 4(a), Fla. Const. "Terms of sentence" surely can have more than one meaning in the abstract. In a narrow sense, it could mean multiple periods of imprisonment. In a broader sense, the phrase could mean multiple components of a single sentence tied to the felony conviction that prompted the disqualification in the first place.

The context in which "terms of sentence" is used in Article VI, section 4, points to the broader meaning. Neither parole nor probation is part of a sentence of imprisonment. But the phrase "including parole or probation" modifies "terms of sentence" to provide non-exclusive exemplars of what must be completed before any restoration of voting rights. A narrow meaning—limited to imprisonment—could not bear the modifying "including" phrase that follows it.

If "terms of sentence" takes the broader meaning, of which probation and parole are only two examples, then the terms of sentence also will include other sentencing sanctions that Florida law treats as part of sentencing. Under Florida law, a "sentence" includes restitution. Indeed, failure of a court to order mandatory restitution renders the sentence incomplete. A fine is another example of a non-

imprisonment sentence under Florida law. Florida law also requires that full payment of all fines, fees, and restitution be a condition of parole or probation. And Florida law authorizes a sentencing judge to extend the restitution order entered at sentencing beyond completion of probation or parole if the defendant has failed to pay the restitution.

Under Florida's criminal law, then, the typical "sentence" includes more than just imprisonment. A sentence can include a fine, restitution, fees and costs, and probation. Even a prison sentence can include a period of probation or parole, each with conditions that require full payment of restitution. All of these aspects of Florida's sentencing scheme work in tandem to achieve Florida's sentencing purposes.

Because the broader meaning of "sentence" includes financial sanctions like restitution and fines, the phrase "completion of all terms of sentence" is general enough to reasonably include payment of those obligations as a condition precedent to a felon's restoration of his voting rights. The Justices of this Court should answer the Governor's request for advice in the affirmative.

ARGUMENT

A reasonable reading of the phrase “completion of all terms of sentence” in Article VI, section 4, of the Constitution—in the context of surrounding text and pre-existing statutory language—includes financial obligations imposed by a sentencing judge as sentencing sanctions.

- A. *There is no standard of review in this proceeding, but the Justices’ analysis should be limited to the question asked by the Governor.*

The Florida Constitution authorizes the Governor to seek “the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution upon any question affecting the governor’s executive powers and duties.” Art. IV, §1(c), Fla. Const. The provision authorizes the Justices to provide their “advisory appraisal for the benefit of the chief executive.” *In re Advisory Opinion of Governor—Civil Rights*, 306 So. 2d 520, 523 (Fla. 1975). In this process, the individual Justices offer their “legal opinions . . . for the Governor’s guidance in the performance of his or her constitutional duties.” *In re Advisory Opinion to the Governor*, 509 So. 2d 292, 301 (Fla. 1987).

The Justices of this Court ordinarily lack the authority to provide advice “concerning the validity of statutes enacted by the legislature.” *In re Advisory Opinion to the Governor*, 509 So. 2d at 301; *see In re Advisory Opinion to the Governor*, 113 So. 2d 703, 705 (Fla. 1959) (noting the “narrow” nature of the authority to provide advice, which does not include passing on a statute’s

constitutionality outside “adversary proceedings”); *cf. In re Opinions of the Justices*, 68 So. 851, 852 (Fla. 1915) (noting that predecessor provision does not authorize advice regarding statutory enactments); *but cf. In re Advisory Opinion to the Governor*, 9 So. 2d 172, 174 (Fla. 1942) (four Justices opining that they may advise as to the interpretation of statutes “only when and as they directly affect” the Governor’s constitutional powers and duties).

The Governor’s request, of course, is appropriately limited to seeking the Justices’ advice as to the interpretation of a single phrase that Amendment 4 added to Article VI. And his limited request does not call for a definitive or far-reaching interpretation of the provision. The analysis need only answer whether *a reasonable* reading of the phrase at issue *could* support inclusion of financial obligations imposed at sentencing. *Cf. In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 800 (Fla. 2014) (concluding that amendment proponent’s interpretation of the proposed text was “a reasonable one that is supported by accepted principles of constitutional interpretation”). That answer should be an easy yes.

B. There is a question before the Justices of this Court presumably because there is a textual ambiguity to be addressed.

The entirety of subsection (a) of Article VI, section 4 (entitled “Disqualifications”) reads as follows:

No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any 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.

The language under consideration is in italics.

The phrase “terms of sentence” is ambiguous because there is a question about “which of two or more meanings applies.” ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 32 (2012) (hereinafter, “SCALIA & GARDNER, *READING LAW*”). For instance, the word “sentence” can have at least two similar meanings within the criminal justice context. Under one meaning, “sentence” can refer just to the punishment of imprisonment. *See* WEBSTER’S NEW WORLD COLLEGE DICTIONARY 1223 (3d ed. 1988) (defining “sentence” as “a decision or judgment, as of a court” determining “the punishment of a convicted person”; and also “the punishment itself”). The *Florida Statutes* contain several examples of this narrow use.

A provision in Chapter 921 (“Sentence”) states that under the Criminal Punishment Code, “[t]he *sentence* imposed by the sentencing judge [should reflect] the *length of actual time* to be served . . . [and the] trial court judge may impose a sentence up to and including the *statutory maximum* for any offense.”

§ 921.002(1)(e), (g), Fla. Stat. (2018).¹ Similarly, a provision in another chapter requires that a prisoner “serve the *sentence* imposed for that crime within the state correctional system regardless of the *length of sentence* or classification of the offense.” § 944.17(3)(b), Fla. Stat. (2018).

A provision dealing with gain time requires that a prisoner “*sentenced to a term of years*” shall have a “maximum sentence expiration date,” which is “when the *sentence* or *combined sentences* imposed on a prisoner will expire.” § 944.275(2)(a), Fla. Stat. (2018); *see also* § 944.275(2)(b), Fla. Stat. (2018) (discussing a prisoner that later “is *sentenced* to an additional *term or terms* without having been released from custody”); § 944.275(4)(a), Fla. Stat. (2018) (referencing “[p]ortions of any *sentences* to be served *concurrently* shall be treated as a single sentence”); § 944.612(1)(a), (b), Fla. Stat. (2018) (defining “Florida releasee” to include someone “paroled before *expiration* of his or her *sentence*” and one “whose *sentence* has *expired*”); § 944.70(1), Fla. Stat. (2018) (referring to a defendant being “released from incarceration only . . . [u]pon *expiration* of the person’s *sentence*”).

But “sentence” has a more general meaning as well. In addition to the imposition of punishment through incarceration, “sentence” can include the imposition of fines and probation. *See* BLACK’S LAW DICTIONARY 1362 (6th ed. 1990). There are also statutes that reflect this broader use. Under the State’s prison

¹ To assist with readability, any emphasis is supplied unless otherwise noted.

diversion program, for instance, a trial court may divert “an offender who would otherwise be sentenced to a state facility by *sentencing* the offender to a nonstate prison sanction.” § 921.00241(1), Fla. Stat. (2018). That subsection allows the trial court to “*sentence* the offender to a *term of probation*, community control, or community supervision” § 921.00241(2), Fla. Stat. (2018). Another section in the same chapter (titled, “Disposition and sentencing; alternatives; restitution”) lists, as an alternative to “a state prison sentence,” the imposition of a “split *sentence*” that involves the offender being “placed on *probation* upon completion of any specified period of such *sentence*, which period may include a term of years or less.” § 921.187(1)(a), Fla. Stat. (2018). In the same chapter, a provision gives a defendant the right to give bail when he or she “is *sentenced* to pay a fine.” § 921.15(1), Fla. Stat. (2018).

Meanwhile, the word “terms” can have at least two different meanings. One definition includes “a set period of time” or “duration.” WEBSTER’S NEW WORLD COLLEGE DICTIONARY 1380 (3d ed. 1988); *accord* BLACK’S LAW DICTIONARY 1470 (6th ed. 1990) (“A fixed and definite period of time”). Another definition, typically in plural form, refers to words and conditions, as in provisions of an agreement: “A word or phrase; an expression; particularly one which possesses a fixed and known meaning in some science, art, or profession”; or “Conditions, obligations, rights, price, etc.” BLACK’S LAW DICTIONARY 1470, 1472 (6th ed. 1990).

And once again, there are criminal statutes that use the same word for different meanings. For example, an inmate who reaches his or her “tentative release date” may “be released under supervision,” which “shall be applicable to all sentences within the overall *term of sentences* if an inmate’s overall *term of sentences* includes one or more sentences [eligible for that supervision].” § 947.1405(2), Fla. Stat. (2018); *see also* § 944.275(2)(b), Fla. Stat. (2018) (discussing a prisoner that later “is sentenced to an additional *term or terms* without having been released from custody”); § 947.16(1), Fla. Stat. (2018) (using “term” to reference inmates “sentenced for” various periods of confinement); § 947.21(1), Fla. Stat. (2018) (providing for possibility that parolee could be returned “to prison to serve out the *term* for which the parolee was sentenced” for violation of parole conditions).

The sentencing judge also can “impose a split sentence whereby the defendant is sentenced to a *term* of probation which may be followed by a period of incarceration” § 948.012(2), Fla. Stat. (2018). But there also are “*terms* and conditions of probation.” § 948.03(1), Fla. Stat. (2018); *cf.* § 947.168, Fla. Stat. (2018) (making references to “parole-eligible sentence” and “*terms* of parole” and “conditions”); § 947.18, Fla. Stat. (2018) (“Conditions of parole”); § 947.19, Fla. Stat. (2018) (“*Terms* of parole”).

This survey of Florida’s criminal statutes and commonly used dictionaries demonstrates that, considered in isolation, the phrase “terms of sentence” and its

component words can take multiple meanings. An ambiguity in isolation, however, does not foreclose a derivation of meaning from the language's context.

C. The phrase "terms of sentence," within the context of its surrounding language, reasonably bears a more general meaning.

The ambiguity identified above is resolved by considering the phrase in the context of its surrounding text and against the background of the established law in the subject area at the time of the phrase's adoption. The interpretive issue here "involves not which of two totally different meanings is intended but what level of generality is to be accorded to a single meaning." SCALIA & GARDNER, READING LAW 31. To determine the appropriate level of generality, the text must be considered in context. "[C]ontext disambiguates." SCALIA & GARDNER, READING LAW 70. This is so because a reader can tell "from contextual and idiomatic clues which of several possible senses a word or phrase bears." SCALIA & GARDNER, READING LAW 70.

Context embraces "a word's historical associations acquired from recurrent patterns of past usage" and "a word's immediate syntactic setting—that is, the words that surround it in a specific utterance." SCALIA & GARDNER, READING LAW 33. That context also comes from the typical meaning of related statutes and decisional law extant at the time the constitutional language was adopted. *Cf. Benjamin v. Tandem Healthcare, Inc.*, 998 So. 2d 566, 571 (Fla. 2008); *Jenkins v. State*, 385 So. 2d 1356, 1357 (Fla. 1980).

In the abstract, one meaning of “all terms of sentence” may well be a narrow one that includes only the several periods of incarceration that the defendant must serve. But as already noted, the phrase cannot be considered in isolation. Article VI, section 4, of the Constitution begins by disqualifying any person “convicted of a felony.” “Convicted of a felony” is a participial phrase modifying a generic “person.” Within that phrase, “a felony” references a generic, countable noun; it does not specify a particular felony, just as the subject of the sentence, “person,” is non-specific. The first sentence of section 4(a) effectively states that *any* person convicted of *any* felony is disqualified from voting.

The second sentence also is in general terms. It has two parallel independent clauses (each with a subject and predicate) joined by a coordinating conjunction (“and”). By the first clause, any voting disqualification that results from the generic felony conviction mentioned in the preceding sentence “shall terminate.” By the second clause, which has an elliptical structure (because it omits the phrase that would refer to the felony conviction that caused a loss of voting rights), voting rights “shall be restored.” Because these are coordinated, parallel, independent clauses (note the use of the modal “shall” in both), the prepositional phrase “upon completion” applies to both clauses. Those clauses, then, have a time element; they will occur only after “completion” of something.

The prepositional phrase “of all terms” serves as a modifier to identify what must be completed. “All” the “terms” must be complete before there is termination of the voting disqualification and restoration of the person’s voting rights. What type of terms must be completed? The prepositional phrase “of sentence” answers this question.² But which “terms of sentence”? Because “terms” is plural, if “sentence” did refer solely to imprisonment, the phrase would have to include multiple sentences of imprisonment. This reading, however, would then conflict with the singular object that prompted the voting disqualification in the first place—a particular felony conviction.

There is a better reading. The first sentence of section 4 highlights the *person* by using “no person” as its subject and modifying that subject with the participial phrase “convicted of *a* felony.” Felony in that phrase is generic and references *any*

² The phrase is not “of *the* sentence,” “of *a* sentence,” or “of [any/all] sentences,” an omission that, although not alone determinative, is another indication that “sentence” does not mean just a discrete period of imprisonment. Use of either the definite or indefinite article, or of the plural form, would have indicated a discrete, countable sentence, presumably which must be completed before the termination and restoration. Put differently, an article preceding the term “sentence” or use of the plural form of “sentence” would have been more consistent with the specific use of “sentence” to refer to a prison term. There is, however, no article. This omission suggests the more abstract concept of “sentence.” A “non-count noun” is non-specific and refers to a category of things. It never takes an indefinite article and takes a definite article only when context demands it. That is how “sentence” is being used here. It applies to “terms” in order to identify the category of things that must be completed before removal of the disqualification and restoration of voting rights.

felony to describe the type of person disqualified from voting. The second sentence's subject, by contrast, is the "disqualification" (along with the voting rights lost as a result). Here, "disqualification" takes the modifier, not the person, and the modifier is the participle "arising." "Arising" in turn is modified by "from a felony conviction." The use of the singular generic in this context links the disqualification that would be terminated to the particular felony conviction that gave rise to it. As discussed above, termination of the disqualification caused by that particular felony conviction occurs at a moment in time introduced by the prepositional phrase "upon completion." That phrase in turn is modified by "terms of sentence."

In other words, "terms of sentence" is linked to and limited by the particular felony conviction causing the disqualification. It would not make sense, in turn, to define "terms of sentence" to mean multiple sentences of imprisonment. Under Florida law, a sentence must be imposed for each offense of conviction. *See* § 775.021(4)(a), Fla. Stat. (2018); Fla. R. Crim. P. 3.701(d)(12). The "judge may order the sentences to be served concurrently or consecutively." § 775.021(4)(a), Fla. Stat. (2018). There could not be several "terms of sentence" (read: terms of imprisonment) to be completed for a single felony conviction. The textual context of "terms of sentence" points to the general meaning of the phrase.

The phrase's post-positive modifier also provides the context necessary to understand it as having the more general meaning. "All terms of sentence" is

followed by the prepositional phrase “including parole or probation.” “When the syntax involves something other than a parallel series of nouns or verbs, a prepositive or postpositive modifier normally applies only to the nearest reasonable referent.” SCALIA & GARDNER, *READING LAW* 152 (“Nearest-Reasonable-Referent Canon”); *cf. id.* at 144 (“Last-Antecedent Canon”). The “including” phrase, then, modifies its nearest reasonable referent, which is “sentence.”

“The verb *to include* introduces examples, not an exhaustive list.” SCALIA & GARDNER, *READING LAW* 132 (“Presumption of Nonexclusive ‘Include’” canon). “Including,” then, typically is a means of being illustrative; it does not introduce an exclusive or limiting list. *Id.* at 132 & nn.1–2. If “sentence” meant just a prison term, however, linking “parole” and “probation” to that specific meaning would not make sense because parole and probation are not part of imprisonment. *See* § 947.16 (2018) (referencing “release order” as part of parole); § 947.19, Fla. Stat. (2018) (noting authorization of “parole release date”); § 948.01(2), Fla. Stat. (2018) (allowing court to “withhold the imposition of sentence upon the defendant” and “place a felony defendant upon probation” if it appears to the court that the defendant need not “presently suffer the penalty imposed by law”); § 948.01(3), Fla. Stat. (2018) (treating probation as “dispositional alternative to imprisonment”); § 948.01(5), Fla. Stat. (2018) (precluding suspension of “imposition of sentence” in favor of probation or community control “unless the defendant is placed under the

custody of the department”); § 948.011, Fla. Stat. (2018) (treating fines and imprisonment as punishment, and probation “as an alternative to imprisonment”).

It is worth noting that if Amendment 4 sought to limit the meaning of “sentence” to imprisonment, there were straightforward ways to do so. Contrast the general wording of “terms of sentence” with the phrases used in the criminal statutes that are specific about the type of sentence being referenced. *See, e.g.*, § 775.089(3)(b)2., Fla. Stat. (2018) (using phrase “end of the term of *imprisonment*”); § 921.161(1), Fla. Stat. (2018) (referring to “sentence of *imprisonment*” and “sentences of *imprisonment*”); § 944.17(6), Fla. Stat. (2018) (referencing a person sentenced “to serve a term of *imprisonment*”); § 907.04(2), Fla. Stat. (2018) (referring to being “in the custody of the Department of Corrections under sentence of *imprisonment*”); § 921.141(6)(a), Fla. Stat. (2018) (“sentence of *imprisonment*”); § 922.051, Fla. Stat. (2018) (same); § 775.16(1)(a), Fla. Stat. (2018) (disqualifying inmates from applying for employment with state agency unless they have “completed all sentences of *imprisonment*”); § 775.083(1), Fla. Stat. (2018) (“sentenced to pay a *fine*”); § 922.02, Fla. Stat. (2018) (allowing for issuance of execution on “sentence imposing *fine*” regardless of whether “the sentence also imposes *imprisonment*”); § 893.135, Fla. Stat. (2018) (requiring that defendant be

“sentenced to pay the maximum *fine*”); § 948.012(2), Fla. Stat. (2018) (authorizing split sentence whereby “the defendant is sentenced to a term of *probation*”).³

The purpose of Amendment 4 also helps here. Context gives words meaning, “and context includes the purpose of the text.” SCALIA & GARDNER, *READING LAW* 56; *but see id.* (noting that “the purpose must be derived from the text . . .”). “The subject matter of the document (its purpose, broadly speaking) is the context that helps to give words meaning . . .” *Id.* at 56. “Purpose sheds light only on deciding which of various *textually permissible meanings* should be adopted.” *Id.* at 57 (emphasis in original). Article VI, section 4, of the Constitution, to which Amendment 4 was added, deals with the disqualifying of a convicted felon from voting. The text of Amendment 4 shows that its purpose is to remove that disqualification and restore the felon’s voting right, and it uses the time-based preposition “upon” to indicate that the restoration will occur at a moment in time.

If “terms of sentence” took on the narrow meaning (period of incarceration), then that moment of time for restoration would be when the felon is released from prison. But under Florida law, state supervision and control do not necessarily end

³ Article VI, section 4’s linking of “sentence” to “terms” via a preposition, rather than using it (or its participle “sentencing”) as an adjective, allows “terms” to take the adjective “all.” This emphasizes that there are multiple, even itemized, aspects of a sentence that must be done as conditions precedent. Contrast this with a phrase that could have been used: “completion of all sentence terms.” In this phrase, “all” could suggest that the term “sentence” is not a category, but instead a discrete, countable thing. That would be more suggestive of a prison term.

when a felon is released from incarceration. A “Florida releasee” includes one “paroled before expiration of his or her sentence” and one “whose sentence has expired.” § 944.612(1)(a), (b), Fla. Stat. (2018). Some inmates may be conditionally released “under supervision subject to specified terms and conditions. . . .” § 947.1405(2), Fla. Stat. (2018); *see* § 947.24, Fla. Stat. (2018) (providing for “period of time” of parole supervision). Others face a period of probation following the completion of their period of incarceration. *See* § 948.012(1), Fla. Stat. (2018) (allowing a sentencing judge to “impose a split sentence whereby the defendant is to be placed on probation . . . upon completion of any specified period of such sentence which may include a term of years or less”).

The parole or probation period of supervision will include “terms and conditions,” the violation of which could lead to further incarceration as part of a defendant’s *original* sentence. *See* § 947.18, Fla. Stat. (2018) (“Conditions of parole”); § 947.19, Fla. Stat. (2018) (“Terms of parole”); § 948.03, Fla. Stat. (2018) (“Terms and conditions of probation”); § 947.21(1), Fla. Stat. (2018) (allowing for return to prison for violation of parole conditions); § 948.06(2), Fla. Stat. (2018) (authorizing revocation of probation and sentence of imprisonment for violation of probation). If Amendment 4’s purpose were simply to automatically restore a felon’s voting rights at the moment of release from a prison term, confusion would ensue if the felon then violated the conditions of his parole or probation and went

back to prison on his original sentence. The prepositional phrase “including parole or probation” solves this problem by ensuring that the felon completes all aspects of his punishment and is conclusively free of state supervision for his felony conviction before his voting rights are restored.

“Terms of sentence” could not mean that a felon has his voting rights restored when he leaves prison and begins working on completing his conditions of parole or probation. That meaning would be inconsistent with the purpose behind inclusion of “including parole or probation,” which is to delay restoration of rights until the defendant is *completely* done with all aspects of his sentence and court supervision.

* * *

The text preceding and following “terms of sentence” puts the phrase in context and clears up the ambiguity. The phrase takes the more general meaning, which, as discussed below, is broad enough to include financial obligations in what must be completed before a felon’s voting rights will be restored.

D. “Terms of sentence” has a general meaning that includes all the components of sentencing available under Florida’s criminal law, including financial obligations.

Because the ambiguity identified in section B, *supra*, is resolved in favor of the broader meaning, “terms of sentence” must include not only imprisonment but also all other aspects of sentencing under Florida criminal law. Florida’s statutory sentencing scheme in fact includes a variety of sentencing sanctions. Under Florida

law, a criminal sentence⁴ does not consist merely of its retributive elements, such as the term of incarceration; rather, the sentence also typically includes other terms and provisions that serve the goals of deterrence, incapacitation, and rehabilitation. The specific requirements for sentencing are found in chapter 921 of the Florida Statutes, appropriately titled “Sentence.”

Chapter 921 authorizes a trial court to include, as a part of its sentence, diverse terms and conditions, including (1) incarceration, (2) probation, (3) monetary fines, (4) community control, (5) mandatory drug treatment, (6) mandatory work release or education, (7) mandatory public service, (8) financial assessments, and even (9) mandatory good faith schoolwork towards a high school diploma. § 921.187, Fla. Stat. (2018). Naturally, if “terms of sentence” includes more than imprisonment, it must include all of these other elements of sentencing. There is nothing in Article VI, section 4’s text that could reasonably exclude any of these elements. Because the context of the phrase “terms of sentence” requires that it take its more general meaning, the phrase must be given its “full and fair scope.” SCALIA & GARDNER, *READING LAW* 101 (“General-Terms Canon”).

A fine is an obvious example of a financial punishment that Florida law contemplates as a potential sentence. *See* § 775.083(1), Fla. Stat. (2018) (a person

⁴ A criminal sentence is a “court-imposed sentence of a convicted offender.” *See* § 960.291(8), Fla. Stat.

convicted of an offense “may be sentenced to pay a fine in addition to any punishment described in s. 775.082”). But restitution is another example. In fact, unlike fines, restitution is an integral part of sentencing in Florida.

There has been much said publicly questioning whether restitution fits within the scope of the phrase “terms of sentence,” such that it must be paid (that is, completed) before a felon’s voting rights can be restored. But how could it not? Restitution is a sanction that the sentencing court *must* order, absent compelling reasons not to, if there is a victim who has suffered loss or damage. *See* § 775.089(1)(a), Fla. Stat. (2018). “Punishment in the form of restitution is not a novel concept, and this form of punitive measure is valid unless so ‘excessive’ or ‘harsh’ as to be plainly and undoubtedly in excess of any reasonable requirements for redressing the wrong.” *State v. Champe*, 373 So. 2d 874, 880 (Fla. 1978) (internal quotations and footnotes omitted).

According to this Court, “the purpose of restitution is two-fold: It acts to (1) compensate the victim and (2) serve the rehabilitative, deterrent, and retributive goals of the criminal justice system.” *Glaubius v. State*, 688 So. 2d 913, 915 (Fla. 1997) (internal citation omitted). “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.” *Spivey v. State*, 531 So. 2d 965, 967 (Fla. 1988). As the U.S. Supreme Court once observed,

Restitution is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused. Such a penalty will affect the defendant differently than a traditional fine, paid to the State as an abstract and impersonal entity, and often calculated without regard to the harm the defendant has caused. Similarly, the direct relation between the harm and the punishment gives restitution a more precise deterrent effect than a traditional fine.

Kelly v. Robinson, 479 U.S. 36, 49 n.10 (1986) (citing Note, *Victim Restitution in the Criminal Process: A Procedural Analysis*, 97 HARV. L. REV. 931, 937–941 (1984)); *see also Paroline v. United States*, 572 U.S. 434, 457–58 (2014) (noting “penological purposes” of a “mandatory restitution scheme,” one purpose of which “is to impress upon offenders that their conduct produces concrete and devastating harms for real, identifiable victims”).

It should be no surprise, then, that Florida’s courts treat restitution as a “part of sentencing.” *See White v. State*, 21 So. 3d 77, 79 (Fla. 1st DCA 2009) (requiring presence of counsel at restitution hearing); *State v. MacLeod*, 583 So. 2d 701, 702 (Fla. 1st DCA 1991), *approved*, 600 So. 2d 1096 (Fla. 1992) (“Restitution is a mandatory part of sentencing and must be imposed absent clear and compelling reasons for refusing to do so.”); *Graham v. State*, 779 So. 2d 370, 371 (Fla. 2d DCA 2000) (noting that restitution is mandatory and that defendants are “on notice that it

will be considered as a part of every sentence”); *State v. Davis*, 133 So. 3d 1101, 1106 n.6 (Fla. 3d DCA 2014) (same); *Moment v. State*, 645 So. 2d 502, 503 (Fla. 4th DCA 1994) (requiring presence of counsel at restitution hearing because restitution is “part of sentencing”); *Kittelson v. State*, 980 So. 2d 533, 535 (Fla. 5th DCA 2008) (explaining that failure to order restitution “results in an incomplete sentence”); *cf. State v. MacLeod*, 600 So. 2d 1096, 1097 (Fla. 1992) (noting that the State sought restitution as part of the defendant’s sentence); *Kirby v. State*, 863 So. 2d 238, 243 (Fla. 2003) (explaining that restitution is “part of a criminal sanction” and “includes coercive elements not available in the enforcement of a civil judgment”).

Indeed, restitution is a constant in sentencing; it is mandatory *regardless* of the type of sentence imposed. Payment of restitution also is integral to both parole and probation, which (notably) are expressly mentioned in the text added by Amendment 4. At the time the voters approved Amendment 4, Florida law mandated that any parole or probation include “complete satisfaction of any restitution ordered” as a condition and authorized revocation of parole or probation for failure to comply with the restitution order. § 775.089(4), Fla. Stat. (2018); *see* § 947.181, Fla. Stat. (2018) (requiring as condition of parole “the payment of fines, fees, restitution, or other court-ordered costs as a condition of parole” and

authorizing revocation of parole for failure to make payments); § 948.032, Fla. Stat. (2018) (same for probation).

A restitution order, imposed at sentencing, may continue even after imprisonment or probation ends. The sentencing court “may require that the defendant make restitution under this section within a specified period or in specified installments.” § 775.089(3)(a), Fla. Stat. (2018). Otherwise, the total restitution “must be made immediately.” *Id.* The period must end or the last installment must be made no later than the end of probation, if ordered; five years “after the end of the term of imprisonment,” if there is no probation; or five years “after the date of sentencing in any other case.” § 775.089(3), Fla. Stat. (2018). If the defendant fails to meet these deadlines—even after the completion of parole or probation—the sentencing judge “may continue the restitution order through the duration of” a civil judgment lien under Florida law. § 775.089(3), Fla. Stat. (2018); *see* § 55.10, Fla. Stat. (2018) (setting expiration periods for civil judgment liens).

This discussion demonstrates, then, that under Florida law extant at the time Amendment 4 was approved, a criminal sentence, to accomplish the goals of the criminal justice system, may include financial obligations like restitution, fees, and fines. *See, e.g., Castrillon v. State*, 821 So. 2d 360, 361 (Fla. 5th DCA 2002) (referring to “financial obligations imposed by courts in criminal cases at sentencing”).

Ideally, the various terms and conditions of a criminal sentence work in tandem to accomplish the purposes of the criminal justice system. For instance, a trial court may apply a downward departure to a term of incarceration if there is a need for the court to impose restitution to make the victim whole. *See* § 921.0026(2)(e), Fla. Stat. (trial court may consider the need for payment of restitution to the victim in determining whether to apply a downward departure of the prison sentence); *Banks v. State*, 732 So. 2d 1065, 1066-67 (Fla. 1999). In *Banks*, the Court explained that the trial court retained great discretion in weighing of the need for restitution against the need for imprisonment:

We conclude that in weighing the need for restitution versus the need for imprisonment a court must take into consideration all the relevant factors, including on the one hand both the nature of the victim's loss and the efficacy of restitution, and on the other hand the consequences of imprisonment. While the victim's wishes concerning restitution are relevant, they are not dispositive—it is the judge, not the victim, who must weigh society's competing needs.

Id. at 1068-69.

The Constitution's requirement that a person convicted of a felony complete all terms of "sentence" before having his voting rights restored necessarily includes *all terms of the sentence*—the terms of incarceration and probation, and the terms of restitution, fines, and fees. All of these terms and conditions imposed by a court at sentencing work together to further the interests of justice, and only together do they constitute a criminal "sentence."

CONCLUSION

The Justices of this Court should advise the Governor that “completion of all terms of sentence” is a general term that includes satisfaction of all legal financial obligations imposed in a sentencing order as a condition precedent to restoration of a convicted felon’s voting rights.

Respectfully submitted,

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I HEREBY CERTIFY that on this 18th day of September, 2019, a true copy of the foregoing brief was furnished to the Clerk of the Court through the Florida Courts eFiling Portal, which shall serve a copy via e-mail to the counsel on the service list below, constituting compliance with the service requirements of Florida Rule of Judicial Administration 2.516(b) and Florida Rule of Appellate Procedure 9.420(c).

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