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IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,352

THE STATE OF FLORIDA,

Petitioner,

vs.

LIVINGSTON MILBRY,

Respondent.

FILED

SID J. WHITE

MAY 23 1985

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

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ON PETITION FOR DISCRETIONARY REVIEW

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PETITIONER'S REPLY BRIEF ON THE MERITS

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ISSUE ON APPEAL

WHETHER THE TRIAL COURT ERRED IN COMMITTING THE RESPONDENT TO THE DEPARTMENT OF CORRECTIONS AS A YOUTHFUL OFFENDER FOR A PERIOD THAT EXCEEDED THE MAXIMUM AUTHORIZED BY LAW FOR THE OFFENSE OF SECOND-DEGREE GRAND THEFT.

SUMMARY OF THE ARGUMENT

Although the Respondent suggests general rules of statutory construction support the conclusion that § 958.05, Fla. Stat. (1983), prohibits sentencing a third-degree felon youthful offender to the jurisdiction of the Department of Corrections for in excess of five years, actual application of those rules demonstrate the contrary.

Plainly ignoring the explicit language in Chapter 958, Appellant argues that the legislative purpose of leniency toward juveniles is frustrated if the State's position is adopted. Close review of § 958.021, Fla. Stat., demonstrates the second objective of Chapter 958 is to provide a vehicle to punish those juveniles who cannot be otherwise handled safely. As such, to commit a juvenile to the Department of Corrections for a period in excess of the statutory maximum in Chapter 775 serves an important state interest.

ARGUMENT

THE TRIAL COURT DID NOT ERR IN COMMITTING THE RESPONDENT TO THE DEPARTMENT OF CORRECTIONS AS A YOUTHFUL OFFENDER FOR A PERIOD THAT EXCEEDED THE MAXIMUM AUTHORIZED BY LAW FOR THE OFFENSE OF SECOND-DEGREE GRAND THEFT.

The Respondent initially suggests that this Court should construe Section 958.05, Fla. Stat. (1983), in pari materia with Chapter 775 to support the decision of the Third District Court of Appeal. Further, the Respondent argues that this Court should apply traditional rules of statutory construction which state that courts should avoid a construction that conflicts with other statutes and gives harsh results. Finally, the Respondent submits that the statutory construction argued by the State conflicts with the legislative purpose of Chapter 958 and causes a class of third-degree felons to experience more harsh treatment without any justification. Close review of the Respondent's argument, however, demonstrates that it ignores certain fundamental rules of statutory construction, the plain language of the statute itself, and the true purpose for the statute's enactment.

Interestingly, the Respondent ignores the plain language of Section 958.05, Fla. Stat., in his attempt to support the Third District Court of Appeal's ruling in the instant case. The clear and unequivocal language utilized by the Legislature

in that section provides:

"If the Court clasifies a person a youthful offender, in lieu of other penalties authorized by law, the Court shall dispose of the criminal case [as described herein]."

The Respondent made no effort to distinguish the language, "in lieu of other penalties authorized by law", and, indeed, cannot rationally do so.

Application of standard rules of statutory construction, as suggested by the Respondent, clearly lead to the conclusion that the Petitioner's position in this case is correct. While legislative intent controls the construction of statutes in Florida, that intent is determined primarily from the language of the statute itself. The plain meaning of the statutory language is always the first consideration. Where the words of a statute are clear and unambiguous, traditional interpretation is not appropriate to displace the expressed intent. Citizens v. Public Service Commission, 435 So.2d 784 (Fla. 1983); St. Petersburg Bank & Trust Company v. Hamm, 414 So.2d 1071 (Fla. 1982); S.R.G. Corp. v. Department of Revenue, 365 So.2d 687 (Fla. 1978); Heredia v. Allstate Insurance Co., 358 So.2d 1353 (Fla. 1978); Griffis v. State, 356 So.2d 297 (Fla. 1978).

Applying these principles, it is clear that the Legislature intended that individuals meeting the requirements of Section 958.05, Fla. Stat., be sentenced pursuant to the scheme embodied therein, not the general sentencing provisions of Chapter 775. No other reasonable construction of the plain language, "in lieu of other criminal penalties authorized by law," can be applied.

The Third District Court of Appeal below felt that the Youthful Offender Act was "obviously designed to impose more lenient sanctions on a youthful offender who meets the statutory requirements, not to aggravate the sanctions which ordinarily apply." Milbry v. State, ___ So.2d ___, Case No. 83-1627 (Fla. 3d DCA December 18, 1984) [10 FLW 21]. Such a statement, however, conflicts with the statute's language and the true purpose of Chapter 958. Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it can not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity. St. Petersburg Bank & Trust Co. v. Hamm, supra; Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (1918).

Accepting the Respondent's recommendation that this Court should read the present statute in pari materia with Chapter 812 and Chapter 775, the only rational result is that the Legislature intended to treat youthful offenders differently. There is a general presumption that the Legislature passes statutes with

knowledge of the prior existing laws and the last expression of the Legislature will prevail in the case of conflicting statutes. State v. Dunmann, 427 So.2d 166 (Fla. 1983). Here, the last expression of the Legislature was Chapter 958.

Further, a pari materia examination reveals that the Legislature wanted youthful offenders meeting certain criteria to be treated differently. See, Section 958.021, Fla. Stat. (1983). Both the plain language of the statute and the State's interest in preventing youthful offenders from associating with more experienced criminals, as well as the desire to provide an additional sentencing alternative to dealing with youthful offenders that no longer can be handled safely as juveniles, plainly supports the Legislature's treatment of youthful offenders separate from the general penalties applicable to felons.

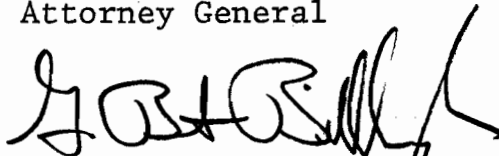
It is neither the function nor prerogative of courts to speculate on statutory constructions more or less reasonable, when the language itself conveys an unequivocal meaning. In the present case, the Legislature could have chosen no more explicit language than that contained in Section 958.05, Fla. Stat. (1983).

CONCLUSION

Based on the foregoing rationale and authority, the Petitioner respectfully requests that this Court reverse the opinion of the Third District Court of Appeal and remand the proceedings in the present case with directions to reinstate the initial sentence.

Respectfully submitted,

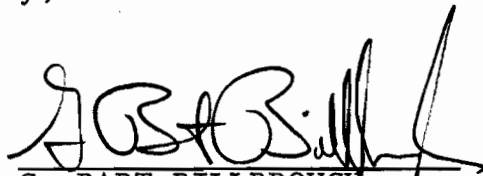
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY BRIEF OF PETITIONER was furnished by mail to RORY STEIN, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125, on this 21st day of May, 1985.



G. BART BILLBROUGH
Assistant Attorney General

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