

Supreme Court of Florida

CORRECTED OPINION

STATE OF FLORIDA, Petitioner,

vs.

No. 68,949

JOSEPH YOST, Respondent.

STATE OF FLORIDA, Petitioner,

vs.

No. 69,347

MORRIS FREENEY, Respondent.

STATE OF FLORIDA, Petitioner,

vs.

No. 69,348

THOMAS MILLER, Respondent.

STATE OF FLORIDA, Petitioner,

vs.

No. 69,144

BERNARD MOSELEY, Respondent.

[May 7, 1987]

SHAW, J.

We review four consolidated cases in order to answer a certified question of great public importance.¹ We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

¹The four consolidated cases are Freaney v. State, 493 So.2d 9 (Fla. 5th DCA 1986); Miller v. State, 492 So.2d 1191 (Fla. 5th DCA 1986); Moseley v. State, 491 So.2d 336 (Fla. 3d DCA 1986); Yost v. State, 489 So.2d 131 (Fla. 5th DCA 1986). The certified question is:

DOES THE APPLICATION OF SECTION 27.3455, FLORIDA STATUTES (1985) TO CRIMES COMMITTED PRIOR TO THE EFFECTIVE DATE OF THE STATUTE VIOLATE THE EX POST FACTO PROVISIONS OF THE CONSTITUTIONS OF THE UNITED STATES AND OF THE STATE OF FLORIDA, OR DOES THE STATUTE MERELY EFFECT A PROCEDURAL CHANGE AS IS PERMITTED UNDER STATE v. JACKSON, 478 So.2d 1054 (Fla. 1985)?

Yost, 489 So.2d at 132.

Chapter 85-213, section 2, Laws of Florida, created section 27.3455, Florida Statutes (1985), setting forth provisions for additional court costs. Section 27.3455(1) sets forth a schedule of costs for felonies, misdemeanors, and criminal traffic offenses. The enforcement or penalty provisions state that

[a]ll applicable fees and court costs shall be paid in full prior to the granting of any gain-time accrued. However, the court shall sentence those persons whom it determines to be indigent to a term of community service in lieu of the costs prescribed in this section, and such indigent persons shall be eligible to accrue gain-time and shall serve the term of community service at the termination of incarceration. Each hour of community service shall be credited against the additional cost imposed by the court at a rate equivalent to the minimum wage. The governing body of a county shall supervise the community service program. The court shall retain jurisdiction for the purpose of determining, upon motion, whether a person is indigent for the purpose of this section. In the event that the emergency release provisions of s. 944.598 are initiated, any inmate who would have otherwise been eligible for release under s. 944.598 shall not be denied release solely as a result of this section.

The parties agree that these penalties for non-payment were retroactively applied in trials for crimes committed by respondents prior to the enactment of the statute. In all cases the district court held that retroactive application of the penalties was a violation of the ex post facto clause in that the penalties rendered the law more onerous than the law in effect on the date of the offense. Weaver v. Graham, 450 U.S. 24 (1981). We agree. By denying the accrual of gain time to prisoners who have not paid the fees and court costs and by imposing a period of community service on indigents unable to pay the fees and court costs, the penalties clearly disadvantage prisoners whose crimes were committed prior to the effective date of the statute. We hold that these penalty provisions of the statute violate the ex post facto clause of both the United States and Florida Constitutions.

Our holding above is narrower than the certified question. The statute has since been amended by chapter 86-154, section 1, Laws of Florida, to delete the penalty provisions for failure to

pay the fees and costs. Presumably, in the event of non-payment, the fees and court costs may be reduced to a civil judgment. Respondent concedes that the statute, as amended, does not violate the ex post facto clause. We rephrase the certified question as follows and answer in the affirmative.

Does application of the penalty provisions of section 27.3455, Florida Statutes (1985), to crimes committed prior to the effective date of the statute violate the ex post facto provisions of the Constitutions of the United States and Florida?

Petitioner state advises us that there are thirty or more cases from the district courts involving the same point of law. To the extent these cases are controlled by the ruling herein, we invite the state to voluntarily dismiss any petitions for discretionary review.

As modified herein, we approve the decisions below and remand for further proceedings consistent with this opinion.

It is so ordered.

McDONALD, C.J., and OVERTON, EHRLICH, BARKETT and KOGAN, JJ.,
Concur

Four Consolidated Cases:

Case Nos. 68,949, 69,347 & 69,348
Applications for Review of the Decisions of the District Court
of Appeal - Certified Great Public Importance

Fifth District - Case Nos. 85-1258, 85-1531 & 85-1256

Case No. 69,144
Application for Review of the Decision of the District Court
of Appeal - Certified Great Public Importance

Third District - Case No. 85-2251

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