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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,  
Petitioner,

vs.

CASE NO. 69,252

MARVIN GRAYDON

Respondent.

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PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

The State of Florida, the prosecuting authority and the appellee below in Graydon v. State, \_\_\_So.2d\_\_\_ (Fla. 1st DCA 1986), 11 F.L.W. 1590, on suggestion of certification, 11 F.L.W. 1822, and the petitioner here, will be referred to as "the State." Marvin Graydon, the criminal defendant and appellant below, and the respondent here, will be referred to as "respondent."

Pursuant to Fla.R.App.P. 9.120(d) and 9.220, a conformed copy of the decision under review is attached to this brief as an appendix.

All emphasis will be supplied by the State.

STATEMENT OF THE CASE AND FACTS

Those details relevant to a resolution of the narrow legal issue presented upon certiorari are related in the decision of the First District in Graydon v. State, which the State adopts as its statement of the case and facts. It need be noted here only that the State on August 28 timely filed a notice with the First District to invoke this Court's discretionary jurisdiction over the decision below, which passes upon the following question certified to be of great public importance:

IS SECTION 843.01, FLORIDA STATUTES,  
VIOLATED WHEN A STATE CORRECTIONAL  
OFFICER IS RESISTED WHILE SUCH OFFICER  
IS IN THE LAWFUL EXECUTION OF A LEGAL  
DUTY?

See Article V, Section 3(b)(3) of the Constitution of the State of Florida and Fla.R.App.p. 9.030(a)(2)(A)(v).

SUMMARY OF ARGUMENT

The First District overlooked this Court's decisions of Bronson v. State, 83 So.2d 849 (Fla. 1955) and Soverino v. State, 356 So.2d 269 (Fla. 1978), plus elementary principles of statutory construction, in determining that §843.01, Fla. Stat. does not criminalize the violent resistance of state as well as county and municipal correctional officers. Respondent's adjudication and sentence for this offense must be reinstated.

ISSUE

IS SECTION 843.01 FLORIDA STATUTES,  
VIOLATED WHEN A STATE CORRECTIONAL  
OFFICER IS RESISTED WHILE SUCH OFFICER  
IS IN THE LAWFUL EXECUTION OF A LEGAL  
DUTY?

ARGUMENT

In Graydon v. State, the First District relied upon its earlier decision of Amaker v. State, \_\_\_ So.2d \_\_\_ (Fla. 1st DCA 1986), 11 F.L.W. 1508, review pending (Fla. 1986), Case No. 69,247, to determine that §843.01, Fla.Stat. does not criminalize resistance of state correctional officers while in the lawful execution of their legal duties.<sup>1</sup>

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<sup>1</sup> §843.01, Fla.Stat. reads as follows:

**§843.01 Resisting Officer With Violence To His Person.--**  
Whoever knowingly and willfully resists, obstructs, or opposes any Sheriff, deputy sheriff, officer of the Florida Highway Patrol, municipal police officer, county or municipal correctional officer, beverage enforcement agent, officer of the Game and Fresh Water Fish Commission, officer of the Department of Natural Resources, member of the Florida Parole and Probation Commission or any administrative aide or supervisor employed by said commission, parole and probation supervisor or parole and probation officer employed by the Department of Corrections, county probation officer, personnel or representative of the Department of Law Enforcement, or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The statute by its very terms criminalizes the resistance of any "person legally authorized to execute process...in the lawful execution of any legal duty." State correctional officers are legally authorized to execute process on prisoners, see collectively §§945.04 and 48.051, Fla.Stat., and hence should be protected under §843.01.<sup>2</sup> Indeed, in Bronson v. State, 83 So.2d 849 (Fla. 1955), this Court held that, because officers of the Florida Game and Fresh Water Fish Commission were expressly authorized to execute process by §372.07, Fla.Stat., they were protected under §843.01 even before they were specifically listed therein. Unless there is some reason why state correctional officers should be protected against resistance less stringently than Game and Fresh Water Fish Commission officers, Graydon and Amaker are contrary to Bronson.

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<sup>2</sup> The aforementioned statutes read as follows:

**945.04 Department of Corrections; general function.**--The Department of Corrections shall be responsible for the inmates and for the operation of, and shall have supervisory and protective care, custody, and control of, all buildings, grounds, property of, and matters connected with, the correctional system.

**48.051 Service on state prisoners.**--Process against a state prisoner shall be served on the prisoner.



An alternative method of establishing that §843.01 criminalizes the resistance of state correctional officers is through application of the doctrine of ejusdem generis.<sup>3</sup> Indeed, in Soverino v. State, 356 So.2d 269, 273 (Fla. 1978), this Court held that §784.07, Fla.Stat. criminalized the assault or battery of both specified and other "law enforcement officers" in accordance with this doctrine. See also Bush v. State, 367 So.2d 273 (Fla. 3rd DCA 1979) and State v. Fernandez, 384 So.2d 163 (Fla. 3rd DCA 1980). Unless there is some reason why state corectional officers should be protected against resistance less stringently than they are protected against assault or battery, Graydon and Amaker are contrary to Soverino.

The First District and respondent could be expected to deny the foregoing conflicts by protesting that §843.01's literal protection of county and municipal but not state correctional officers constitutes an "ambiguity" which the courts are obliged to construe in favor of criminal defendants under the "rule of lenity," §775.021(1), Fla.Stat. However, this rule "only serves as an aid for resolving an ambiguity; it is not to be used to

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<sup>3</sup> "Under the well-established doctrine of ejusdem generis, where general words follow the enumeration of particular classes of persons, the general words will be construed as applicable only to persons of the same general nature or class as those enumerated, unless an intention to the contrary is clearly shown," Soverino v. State, *infra*, 356 So.2d 269, 273; see also Delgado-Santos v. State, 471 So.2d 74, 77-78 (Fla. 3rd DCA 1985).

beget one." Callanan v. United States, 364 U.S. 587, 596 (1961). It was clearly and unambiguously not necessary for the Florida Legislature to explicitly list "state correctional officers" as enjoying the protection from resistance specifically afforded to county and municipal correctional officers because the former officers were already covered in §843.01 both by virtue of the fact that they are authorized to execute process and by application of the doctrine of ejusdem generis as previously explained. Moreover, assuming arguendo that §843.01 is facially "ambiguous," such ambiguity would not be fatal as it would be absurd to suggest that the Legislature could have intended to criminalize resistance of county and municipal but not state correctional officers. "The intent of the legislature is controlling over the literal interpretation of the words of the statute." State v. Ramsey, 475 So.2d 671, 673 (Fla. 1985); see also Griffis v. State, 356 So.2d 297, 299 (Fla. 1978). The rule of lenity "in truth provides little more than atmospherics, since it leaves open the crucial question-almost invariably present-of how much ambiguousness constitutes an ambiguity." United States v. Hansen, 772 F.2d 940, 948 (D.C. Cir. 1985) (Scalia, J.).

To summarize, this Court must reverse the decision below, and that in Amaker,<sup>4</sup> in order to restore the §843.01 protection

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<sup>4</sup> The First District in Amaker arbitrarily denied the State's motion to certify to this Court the same question of great public importance it certified in this case. The State trusts that (cont'd on next page)

against violent resistance afforded to the men and women of the Florida Department of Corrections by the Legislature which the First District improperly abrogated.

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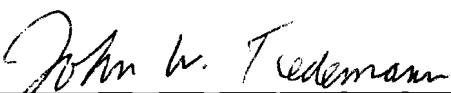
this Court will grant its petition for writ of certiorari in Amaker based upon the afores demonstrated conflicts with Bronson and Soverino and reverse that decision as well as this one.

CONCLUSION

WHEREFORE, the State respectfully moves this Honorable Court to REVERSE the decision below and REMAND with directions that the judgment and sentence imposed by the trial court be REINSTATED.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing "Petitioner's Initial Brief on the merits" has been forwarded to Ms. Martha Ann Lott, Attorney for Appellant, 5000 27th Court Southwest, Suite C, Gainesville, Florida, 32606, on this 5th day of September, 1986.

  
\_\_\_\_\_  
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