

IN THE SUPREME COURT OF FLORIDA

FILED

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CLERK OF THE COURT
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STATE OF FLORIDA,
Petitioner,

vs.

CASE NO. 69,252

MARVIN GRAYDON,
Respondent.

INITIAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

MARVIN GRAYDON, Respondent and the Appellant below, was a Criminal Defendant in the Trial Court. The State, Petitioner and Appellee below, prosecuted and convicted Marvin Graydon.

STATEMENT OF THE CASE AND FACTS

On September 14, 1984, Marvin Graydon, an inmate in the Union Correctional Institute was charged with Resisting an Officer with violence of FLorida Statute 843.01. The victim of the offense was a State Correctional Officer.

The State filed an information charging Marvin Graydon with a violation of Florida Statute 843.01. The case proceeded to Jury Trial where a verdict of guilty was returned. The Trial Court entered its Judgement and sentence from whence appeal was taken.

The First District Court of Appeals reversed Respondent's conviction under F.S. 843.01 relying on Amaker v. State, Case No. BG-54 (Fla. 1st DCA July 10, 1986). The State filed a Suggestion of Certification.

SUMMARY OF ARGUMENT

The First District Court of Appeal correctly reversed and remanded to the Trial Court Respondent's conviction under Fla. Stat. sec. 843.01 for Resisting the Arrest of a State Correctional Officer when the Statute does not include State Correctional Officers as being within the class protected. Case law does not expand the definition of the Statute. Because a similar Statute 784.07 prohibiting Battery of a Law Enforcement Officer, does define Correctional Officers as being within the protected class; if the Legislature had intended to include Correctional Officer's in the protected class, they would have done so. Strict construction of the Statute prohibiting Resisting Arrest with Violence would prohibit conviction on the facts in Graydon v. State. The First District Court of Appeal was well advised as to case and statutory law and the principles of statutory construction in reaching It's decision.

ISSUE

- I. IS A STATE CORRECTIONAL OFFICER INCLUDED WITHIN THE CLASS OF PROTECTED UNDER FLORIDA STATUTE 843.01 AND THE STRICT CONSTRUCTION THEREOF.

ARGUMENT

Florida Statute 843.01 makes it illegal to:

Obstruct, or oppose any Sheriff, Deputy Sheriff, Officer of the Florida, Highway, Patrol, Municipal Police Officer, Beverage Enforcement Agent, Officer of the Game and Fresh Water Fish Commission, officer the Capital Department of Natural Resources, any member of Florida Parole and Probation Commission or any administrative aid or supervisor employed by said Commission, any county probation officer or any personnel or representative of the Department of [Criminal] Law Enforcement or any other person legally authorized to execute process, in 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.

The term "Law Enforcement Officer" is not further defined in this Statutory Section.

Case law specifically addressing officers within this section of the Statute does not so broaden the Statute as to allow conviction based upon resisting arrest by a State Correctional Officer.

In State v. Fernandez, App., 384 So. 2d 162 (1980) the wording of the Statute was broadened to include a Dade County

Correctional Officer ruling that such an officer was the same as Deputy Sheriff in Dade County. In Smith v. State, App., 292 So. 2d 69 (1974) the court ruled that the defendant was subject to a charge of resisting arrest with violence even though the officer who initially arrested him was not a "municipal police officer". He was off duty at the time and employed as a security guard for a department store. In that case the original arresting security guard was assisted by three uniformed police officers who were also named in the information charging the Defendant with resisting arrest.

In Bronson v. State, 83 So. 2d 849 (1956), the Statute was broadened to include conservation agents since they are authorized specifically by Section 372.07 to execute search warrants, and serve subpoenas.

The Statute has not been broadened to include any officer. In Licata v. State, 124 So. 2d 98 (1946) the Court did not expand the Statute to include an officer not armed with process even when there was no finding that the officer was not acting outside the lawful execution of a legal duty. From that case it can be presumed that the Court did not wish to further expand the Statute.

The wording of the Statute and the case law following are specifically contrary to the wording of the Statute in case law supporting 784.07 which makes it illegal to commit a Battery upon a Law Enforcement Officer. Under that Statute a State Correctional Officer is specifically included in supporting case

law specifying that a State Correctional Officer is to be considered a Law Enforcement Officer for purposes of the Statute.

It was within the Legislature's purview to include State Correctional Officers within the definition of Florida Statute 843.01 should that have been their intention. As stated by the 1st District Court of Appeal in Amyker v. State, 11 F.L.W. 1508, 1986,

the Legislative history of Section 843.01 reveals that the original House of Representatives Bill No. 252 sought to include within the statute the general term "correctional officers" defined pursuant to Section 944.58(1), Florida Statutes (1979), as any person employed by this state or any subdivision thereof whose responsibility is the supervision, protection, care, custody, and control of inmates within the correctional institutions of this state. (Fla. H. R. Journal, p. 748, Reg. Sess. May 24, 1979).

Upon reaching the Senate, House Bill No. 252 was amended to specifically enumerate "county and municipal correctional officers" within the the list of officers whom it is a felony to resist with violence, (Fla. S. Journal, Senate Bill No. 566, p.515, Reg. Sess. May 23, 1979), and to delete any reference to a definition of "correctional officers" under section 944.58(1), Fla. Stat. (1979). The House concurred in the Senate amendment and the amendment was passed as such. (Fla. H. R. Journal, p. 1209, Reg. Sess. June 6, 1979).

Further, it was within the purview of the Appellate Courts to expand or clarify the definitions lawfully to be considered within this section had the legislative intent been unclear. Since they have not done so, to prosecute and to convict the Respondent, Marvin Graydon, on the basis of the facts in the case at Bar would be beyond the scope contemplated by the Legislature and outside the definitions of the Statute in violation the Defendant's constitutional right to fair trial.

In Soverino v. State, 356 So. 2d. 269 (Fla. 1978) the Court in addressing the question of double jeopardy between Statutes 784.07 and 843.01 said:

Sections 843.01 and 784.07 will frequently overlap, and the prosecutor is imbued again with the discretion to decide under which Statute he wishes to charge.

In the case at Bar, the two Statutes involved overlap, and the facts were deemed sufficient to prove the second offense. There was one single act by the defendant that resulted in charges of Battery of the Law Enforcement Officer and also Resisting Arrest with Violence. In this case, the facts overlay and the State's interest in protecting State Correctional Officers is covered by Fla. Stat. sec. 784.07.

Petitioner argues that a State Correctional Officer is the same as a County or Municipal Correctional Officer and is protected as a Law Enforcement Officer citing Florida Statute Chapter 843.01. Petitioner specifically relies upon that portion of the Statute which reads:

whoever knowingly and willfully resists, obstructs, or opposes any..... or other person legally authorized to execute process in the lawful execution of any legal duty, is guilty of a felony of the third degree.

Petitioner does not contest Respondent's argument that nowhere in Florida Statute section 843.01 is a State Correctional Officer specifically named, but relies instead on Petitioner's argument that State Correctional Officers are authorized to execute legal process.

Petitioner further cites Florida Statute section 945.04

which reads:

Department of Corrections: General function.
The Department of Corrections shall be responsible for
the inmates and matters connected with the correctional
system.

Petitioner then cites Florida Statute section 48.051:

process against a state prisoner shall served on the
prisoner.

In neither of these sections do Florida Statutes provide that
State Correctional Officers are authorized to execute service of
process and Petitioner cites no case law in support of its
position.

Respondent's position, that a State Correctional Officer is not
protected under Florida Statute section 843.01 is unrebutted and
Respondent should prevail.

CONCLUSION

The First District Court of Appeal rightfully reversed the Trial Court on the issue of protection of State Correctional Officers under Florida Statute 843.01 on the grounds that they were not included within the class protected as defined therein.

Respectfully submitted,



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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by United States Mail to Assistant Attorney General, JOHN W. TIEDEMANN, Department of Legal Affairs, Capitol Building, Tallahassee, Florida 32302, this 27th day of September, 1986.



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