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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs. CASE NO. 71,599

EARL MORRIS JACKSON,

Respondent.

_____/

PETITIONER'S BRIEF ON THE MERITS

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PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Respondent was the defendant in the trial court, and will be referred to as respondent in this brief. A one volume record on appeal will be referred to as "R", followed by the appropriate page number in parentheses. There are two transcripts, both consecutively numbered at the bottom of the page with the same page numbers. To avoid confusion, the transcript of the plea hearing held on August 18, 1986, will be referred as to "P". The sentencing transcript of September 8, 1986, will be referred to as "S".

STATEMENT OF THE CASE AND FACTS

The State charged Respondent with felony petit theft on May 21, 1986. (R 6). On August 18, 1986, Petitioner amended the information to charge Respondent with two previous underlying grand thefts occuring in the county. Respondent pled no contest, reserving the issue of whether the circuit court had jurisdiction to adjudicate Respondent guilty of felony petit theft where the underlying prior theft offenses were grand theft rather than petit theft. (R 15-22; P 7-13).

The trial court sentenced Respondent within the recommended guidelines on September 8, 1986. (R 27-31; S 2-6). Respondent timely appealed.

On November 13, 1987 the First District Court of Appeal reversed the Respondent's conviction. That court held the statute, §812.014(2)(c), Fla. Stat. (1985), did not permit the reclassification of a petit theft offense to felony theft based upon two previous underlying offenses of grand theft. See Appendix at pages two through three. The district court however recognized that its sister court, the Second District, had specifically held that the statute did permit reclassification for underlying grand theft offenses, in Hall v. State, 469 So.2d 224 (Fla. 2d DCA 1985). Id. The First District rejected the Second District's reasoning and certified the conflict. (Appendix, p. 5).

Pursuant to Fla.R.App.P. 9.030(a)(2)(A)(vi), the State timely filed a Notice to Invoke Jurisdiction on December 14, 1987. This Court issued a briefing schedule on December 16, 1987. This appeal follows.

SUMMARY OF THE ARGUMENT

This Court should approve the Second District Court of Appeals holding in Hall v. State, 469 So.2d 224 (Fla. 2d DCA 1985), authorizing the reclassification of a petit theft to grand theft where a criminal defendant has committed previous grand thefts. The First District's opinion rejecting the reasoning in Hall leads to an absurd result. A defendant who has committed two previous petit thefts and committs a third petit theft, is subject to reclassification of the third offense whereas a defendant who commits two previous grands thefts is not subject to the reclassification, under the First District's holding. This court should reverse the First District's holding as it defeats the obvious legislative intent to reclassify petit thefts committed by defendants engaging in a continuing pattern of thefts.

ARGUMENT

ISSUE

WHETHER THE LEGISLATURE, UNDER SECTION 812.014(2)(c), FLA. STAT., INTENDED TO RECLASSIFY A PETIT THEFT TO GRAND THEFT COMMITTED BY A CRIMINAL DEFENDANT WHO COMMITTED TWO PREVIOUS GRAND THEFTS.

This Court faces the issue of whether above statute encompasses Respondent's petit theft offense, committed after two previous offenses of grand theft. Under the earlier decision of the Second District Court of Appeal, the Respondent was subject to reclassification of his offense of petit theft to grand theft, as "the legislature did not intend to punish [a] defendant who had committed a prior felony. . . less severely than one who had committed two prior misdemeanors." Hall v. State, 469 So.2d 224-225 (Fla. 2d DCA 1985). Section 812.014(2)(c) provides that "upon a third or subsequent conviction for petit theft, the offender shall be guilty of a felony of the third degree. . . ." Section 812.014(2)(c), Fla. Stat. (1985). The State here appeals the First District's decision holding that this statutory language does not authorize reclassification of a petit theft where the two previous thefts involved grand thefts, specifically rejecting the Second District's holding in Hall, supra.

This Court should approve the Second District's holding in Hall and reject the First District's sub judice. The decision in Hall properly accomodates the obvious legislative intent to

increase criminal liability when a person repeatedly commits theft.

The Court in Hall also relied upon this Court's decision in State v. Harris, 356 So.2d 315 (Fla. 1978) which "analagized §812.021(3), Fla. Stat. (1977), the predecessor of §812.014, Fla. Stat. (1983), with §775.084, the habitual offender statute. . . ." 469 So.2d at 225. The Court followed this Court's analysis that the reclassification scheme and the habitual offnder act are "essentially identical, with similar purposes. . . ." Harris, 356 So.2d at 316. Thus, in Ezell v. State, 384 So.2d 1309 (Fla. 2d DCA 1980), the Second District reasoned that the legislature intended that prior felonies would be considered the equivalent of a prior misdemeanor, as the legislature "did not intend to punish a defendant who has committed two misdemeanors more severely than one who has committed a felony and a misdemeanor." 384 So.2d at 1310. Respondent stipulated that he committed two previous grand thefts but argues that §812.014 reclassification applies only to those persons who committed previous petit thefts. (P 8). The First District accepted Respondent's argument.

The First District stated the "legislature must assume to know the meaning of words and to express its intent by the use of words found in the statute." (Appendix, p 3). This maximum of statutory interpretation however does not negate the contrary

rule that a court should interpret a statute to effectuate legislative intent even where the correct interpretation varies from the "literal meaning" of the statute. Griffis v. State, 356 So.2d 297 (Fla. 1978); Foley v. State, 50 So.2d 852 (Fla. 1951). This Court has long held that where "the context of a statute taken literally conflicts with a plain legislative intent clearly discernible, the context must yield to the legislative purpose, for otherwise the intent of the lawmakers would be defeated." Beebe et wx. v. Richardson, 156 Fla. 559, 23 So.2d 718, 719 (1945). The First District erred by taking the context of §812.014, Fla. Stat., literally and defeating the "clearly discernible" purpose of the legislature to punish repeat theft offenders as felons, regardless of the property value stolen in the latest offense.

The First District found however that the statute did not authorize a reclassification based upon prior commissions of grand theft:

> Obviously, by enacting 812.014(2)(c), the legislature intended that repeat petit theft offenders would be treated more severely. However, a defendant with. . . two prior grand thefts, has already been subjected to the greater punishment for his. . . grand thefts. In such cases, one is not dealing with a repeat petit theft offender who will manage to escape more serious consequences for his repeated. . . criminality. . . . since presumably,

> those defendants previously convicted of the more severe crime of grand theft would have already been punished more severely therefore.

(Appendix at p. 3). This analysis ignores the evil the Legislature intended to address. The commission of the third petit theft by a convicted thief should be more seriously punished regardless of the previous punishments. In other words, when Respondent stole property valued less than $100.00, after twice previously committing theft, the legislature intended Respondent be charged with a felony. Under the First District's ruling, Respondent receives a benefit under a statute drafted to punish repeat offenders.

Furthermore, the First District's reliance upon Cuthbert v. State, 459 So.2d 1098 (Fla. 1st DCA 1984) is misplaced. That decision is incorrect under this court's holding in Strickland v. State, 437 So.2d 150 (Fla. 1983) which held a defendant's act of attempted murder subject to reclassification.

The polestar of the treacherous journey of statutory interpretation is legislative intent. City of Tampa v. Thatcher Glass Co., 445 So.2d 578 (Fla. 1984); Parker v. State, 406 So.2d 1089 (Fla. 1981). Any interpretation of a statute which leads to an unreasonable or ridiculous result must be avoided. Drury v. Harding, 461 So.2d 104 (Fla. 1984). The lower court's interpretation allows repeat grand theft offenders to avoid

reclassification of a petit theft while repeat petit theft offenders are subject to greater punishment for the later petit theft. Thus, under this rationale, a person who steals $19,000 worth of property twice, and then steals $99 worth of property may only be convicted of a misdemeanor on the third offense. But a person who steals one dollar worth of property twice, and then steals $99 worth of property may be convicted of a felony for the third offense.

The lower court's literal interpretation, and unreasonable result, is not proper. Towerhouse Condominium Inc. v. Millman, 475 So.2d 674 (Fla. 1985), City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla. 1983); Hall v. State, 469 So.2d 224 (Fla. 2d DCA 1985). This court should approve the reasonable interpretation employed in Hall v. State, 469 So.2d 224 (Fla. 2d DCA 1985) and reject the interpretation of the lower court. The Florida legislature did not reject the interpretation in Hall, rendered over two years prior to the instant opinion, and this, Court should also approve the decision in Hall which interprets the statute in accordance with clearly discernible intent.

CONCLUSION

Petitoner urges the Court to reverse the lower court's holding and hold that §812.014(2)(c), Fla. Stat., applies where grand theft is the prior underlying offense authorizing reclassification of a later petit theft.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on the Merits has been forwarded to P. Douglas Brinkmeyer, Assistant Public Defender, Post Office Box 671, Tallahassee, FL 32302, via U. S. Mail, this 8th day of January 1988.

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