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IN THE SUPREME COURT OF FLORIDA

BOBBY ROSS :

Petitioner, :

vs. : DCA CASE NO. 90-563
SUP CASE NO. 78,179

STATE OF FLORIDA :

Respondent. :

PETITIONER'S BRIEF ON JURISDICTION

NANCY DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

LYNN A. WILLIAMS
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR #195484
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STATE OF FLORIDA,	:	
Respondent,	:	
_____/	:	

I. PRELIMINARY STATEMENT

The opinion sought to be reviewed is Ross v. State, Case No. 90-563, opinion filed May 24, 1991. Filed with this brief is a copy of the opinion. References to pages in the appendix will be designated by "A".

II. STATEMENT OF THE CASE AND FACTS

Petitioner was convicted of escape and sentenced as an habitual violent felony offender under Section 775.084, Florida Statutes, (Supp. 1988) to thirty years incarceration.

Petitioner asserted both at the trial level and in the appellate court below that Section 775.084, Florida Statutes, (Supp. 1988) is unconstitutional.

The appellate court, in ruling on petitioner's case, expressly rejected the argument, that the sentencing statute was unconstitutional. The court specifically addressed petitioner's argument that substantive due process rights are violated when an offender is sentenced as an habitual violent felony offender when the offense he is being sentenced for is non-violent. In so ruling, the Court stated:

> Petitioner contends that substantive due process rights are violated when a defendant is classified as a violent felony offender pursuant to Section 775.084, and thereby subjected to an extended term of imprisonment, if he has been convicted of an enumerated violent felony within the previous five years even though his present offense is a nonviolent felony. He asserts that to enhance a defendant's sentence for a nonviolent felony is not a reasonable means which bears a rational relationship to the legitimate goal of providing society added protection against violent individuals. As in Henderson [569 So.2d 925 (Fla. 1st DCA 1990), petitioner has failed to present convincing argument that the statute bears no rational relationship in this respect to its purported purpose. In our view, just as the state is justified in punishing a recidivist more severely than it punishes a first offender, its even more severe treatment of a recidivist who has exhibited a propensity toward violence is also reasonable. Therefore, we reject

> appellant's argument that section 775.084, Florida Statutes (Supp. 1988), does not serve a legitimate state interest in this respect by utilizing a means reasonably related to achieve the intended purpose.

Ross v. State, A-3.

On June 24, 1991, petitioner filed a notice to invoke discretionary jurisdiction in this court on the basis that the decision of the appellate court expressly declared valid a state statute.

III. SUMMARY OF ARGUMENT

The decision of the lower appellate court expressly declared valid Section 775.084, Florida Statutes, (Supp. 1988). Therefore this Court has jurisdiction. Petitioner respectfully submits this Court should accept jurisdiction to resolve the question of the constitutionality of the habitual violent felony offender statute.

IV. ARGUMENT

ISSUE

THE DECISION IN PETITIONER'S CASE EXPRESSLY DECLARES VALID A STATE STATUTE

The lower appellate court in petitioner's case expressly declared valid Section 775.084, Florida Statutes, (Supp. 1988). This Court has jurisdiction. Fla.R.App.P. 9.030 (a)(2)(i).

Petitioner respectfully submits that this Court should accept jurisdiction.

The question of the constitutionality of the habitual violent felony offender statute has been litigated since the statute's enactment and no doubt attacks on the constitutionality of the statute will continue until such time as this Court rules on the matter. The habitual violent felony offender statute impacts the criminal justice process at every stage, including plea negotiation, sentencing, and appeal. The effect on the state prison system is only beginning to be felt but undoubtedly will be enormous due to the minimum mandatory portion of the statute.

Petitioner submits the statute is unconstitutional. The statute violates the equal protection clause because it creates classifications which are unreasonable and irrational; it violates the constitutional guarantees of due process because, although it has a legitimate purpose, the means selected to achieve this purpose are unreasonable, arbitrary and capricious; it is void for vagueness because, by its terms, it is impossible to tell who initiates the process for enhanced

sentencing, to whom the statute should be applied, and whether its provisions are mandatory; and it allows such classification where the offense before the court is not even a violent felony.

The due process clauses of the state and federal constitutions require substantive due process, i.e. that a statute's general purpose be for the general welfare and also:

> that the means selected shall have a reasonable and substantial relation to the object sought to be attained and shall not be unreasonable, arbitrary, or capricious. See Nebbia v. New York, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 (1934); Lasky v. State Farm Insurance Co., 296 So.2d 9, 15 (Fla. 1974); L. Maxcy, Inc. v. Mayo, 103 Fla. 552, 139 So. 121, 129 (1931).

State v. Saiez, 489 So.2d 1125, 1128 (Fla. 1986).

In analyzing a statute under substantive due process grounds, the first step is determining what the legislative objective of the statute is. See State v. Walker, 444 So.2d 1137 (Fla. 2d DCA) aff'd 461 So.2d 108 (Fla. 1984).

Petitioner submits the legislative objective of the statute at bar is added protection to society from habitually violent offenders by the use of enhanced penalties. See Eutsey v. State, 383 So.2d 219, 223 (Fla. 1980) (previous 1977 habitual felony offender law has as purpose "to allow enhanced penalties for those defendants who meet objective guidelines indicating recidivism").

The question for this Court becomes whether or not augmenting an individual's sentence for a non-violent felony, such as worthless check, is a reasonable means which bears a

substantial relation to the legitimate goal of giving society added protection from violent individuals.

Petitioner submits the question answers itself.

First, under the sentencing scheme the individual being sentenced has already been sentenced for the predicate violent felony. Thus, the individual has already been sentenced for the violent offense in a manner which one must presume was commensurate with the offense and designed to protect society.

Secondly, when the offender appears before the court for sentencing on a subsequent non-violent offense, the commission of the non-violent felony adds no relevant criteria for determining the offenders likelihood to engage in the commission of violence nor does it otherwise elucidate his past violent behavior. Thus there is no reasonable basis for concluding that the offender engages in a pattern of violent behavior. Therefore the statutory means of identifying offenders prone to repeat violent behavior, a past violent offense, is not reasonable and bears no substantial relation to giving society added protection from habitual violent offenders.

The statute is unconstitutional. This Court should accept jurisdiction.

V. CONCLUSION

The decision of the lower appellate court expressly declared valid Section 775.084, Florida Statutes, (Supp. 1988). Therefore this Court has jurisdiction. This court should accept jurisdiction to finally resolve the question of the constitutionality of this statute.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER

Lynn A Williams

LYNN A. WILLIAMS #195484
Assistant Public Defender
Leon County Courthouse
301 S. Monroe
Tallahassee, FL 32301

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Marilyn McFadden, Assistant Attorney General, Tallahassee, Florida, this 5th day of July, 1991.

Lynn A Williams

LYNN A. WILLIAMS
Assistant Public Defender

IN THE SUPREME COURT OF FLORIDA

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Petitioner, :

vs., : SUP. CASE NO. 78,179
DCA CASE NO. 90-563

STATE OF FLORIDA, :

Respondent, :
_____/ :

APPENDIX

TO

PETITIONER'S BRIEF ON JURISDICTION

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

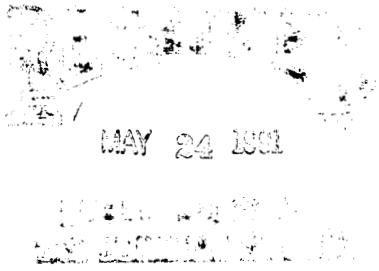
BOBBY ROSS,	*	NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND
Appellant,	*	DISPOSITION THEREOF IF FILED.
V.	*	CASE NO. 90-563
STATE OF FLORIDA,	*	
Appellee.	*	

Opinion filed May 24, 1991.

An Appeal from the Circuit Court for Duval County.
R. Hudson Olliff, Judge.

Nancy Daniels, Public Defender; Lynn A. Williams, Assistant Public Defender, Tallahassee, for appellant.

Robert A. Butterworth, Attorney General; Virlindia Doss, Assistant Attorney General, Tallahassee, for appellee.



WIGGINTON, J.

Appellant appeals a judgment and sentence entered upon his conviction of escape. We affirm.

We find the points raised by appellant to be without merit. With one exception, his assertions that section 775.084, Florida

Statutes (Supp. 1988), is unconstitutional have previously been rejected by this court in numerous cases, including Pittman v. State, 570 So.2d 1045 (Fla. 1st DCA 1990); Henderson v. State, 569 So.2d 925 (Fla. 1st DCA 1990); Barber v. State, 564 So.2d 1169 (Fla. 1st DCA 1990); and Holley v. State, 16 F.L.W. D785 (Fla. 1st DCA 1991). See also King v. State, 557 So.2d 899 (Fla. 5th DCA 1990). However, one of his constitutional challenges to that statute has not previously been resolved and therefore merits discussion.

Appellant contends that substantive due process rights are violated when a defendant is classified as a violent felony offender pursuant to section 775.084, and thereby subjected to an extended term of imprisonment, if he has been convicted of an enumerated violent felony within the previous five years even though his present offense is a nonviolent felony. He asserts that to enhance a defendant's sentence for a nonviolent felony is not a reasonable means which bears a rational relationship to the legitimate goal of providing society added protection against violent individuals. As in Henderson, appellant has failed to present convincing argument that the statute bears no rational relationship in this respect to its purported purpose. In our view, just as the state is justified in punishing a recidivist more severely than it punishes a first offender[1], its even more severe treatment of a recidivist who has exhibited a propensity

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[1] Barber; King.

toward violence is also reasonable. Therefore, we reject appellant's argument that section 775.084, Florida Statutes (Supp. 1988), does not serve a legitimate state interest in this respect by utilizing a means reasonably related to achieve the intended purpose.

AFFIRMED.

ERVIN, J., and WENTWORTH, Senior Judge, CONCUR.