IN THE SUPREME COURT OF FLORIDA

CASE NO. 78,955

CHARLIE FORREST,

PETITIONER,

V.

STATE OF FLORIDA,

RESPONDENT.

****

RESPONDENT'S ANSWER BRIEF ON THE MERITS

****

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL
TALLAHASSEE, FLORIDA

JAMES J. CARNEY
ASSISTANT ATTORNEY GENERAL
111 GEORGIA AVE., SUITE 204
WEST PALM BEACH, FL 33401
FLORIDA BAR #475246
(407) 837-5062

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES **PAGE**

OTHER AUTHORITIES

PRELIMINARY STATEMENT

Respondent was the Appellant in the Fourth District Court of Appeal and the Prosecution in the Criminal Court of the Seventeenth Judicial Circuit, Criminal Division, in and for Broward County, Florida. Petitioner was the Appellee in the Fourth District Court of Appeal, and the Defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

In the brief, the parties will be referred to as they appear before the Supreme Court of Florida except that Respondent may also be referred to as the State or Government. The Petitioner may also be referred to as Mr. Forrest.

The following symbols will be used:

"R" Record on Appeal

All emphasis has been added unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Appellant accepts Appellee's Statement of the Case and Facts as given to the extent that they are true, accurate and nonargumentative, with the following additions and clarifications:

Appellee was arrested at 4:30 p.m. on May 11, 1990 (R 9). He did not realize he was within 1000 feet of a school, but he knew he was near the school (R 9 - 10). He had consumed about a six pack of beer over a three and one-half hour period at the time of his arrest (R 14). Appellee realized that what he was doing was wrong (R 14). He was fully aware of his surroundings at the time of his arrest (R 14). He knew right from wrong at the time (R 15). Appellee testified that he had been in a rehabilitation program while in jail (R 11). The prosecutor argued that the trial judge did not have the discretion to go below the three year mandatory minimum (R 15).

SUMMARY OF THE ARGUMENT

The district court was correct in reversing and remanding Petitioner for resentencing to a term which includes the minimum term of imprisonment for three calendar years in accordance with Section 893.13(1)(e).

ARGUMENT ON APPEAL

THE TRIAL COURT ERRED IN FAILING TO IMPOSE A THREE YEAR MINIMUM MANDATORY SENTENCE WHERE PETITIONER PLED GUILTY TO PURCHASING COCAINE WITHIN 1,000 FEET OF A SCHOOL IN VIOLATION OF FLA. STAT. 893.13(1)(e).

Petitioner pled guilty to purchasing cocaine within 1,000 feet of a school in violation of §893.13(1)(e)(1989) (R 23). Section 893.13(1)(e) provides a mandatory minimum sentence of three calendar years for such a conviction. The trial court entered an "Order of Departure" in which the trial court relied of §397.12 Fla. Stat. to circumvent the language of the statute imposing the three year mandatory sentence (R 20-22). As such, the trial court erred in imposing a downward departure sentence.

In State v. Lane, 587 So. 2d 477 (Fla. 4th DCA 1991), the court held that Section 397.12 does not provide an exception to the minimum mandatory sentencing requirement of section 893.13(1)(e). In doing so, the Fourth District Court of Appeal looked at a very similar issue in State v. Ross, 407 So. 2d 1380 (Fla. 4th DCA 1989). In Ross, the defendant was found guilty of two firearm offenses requiring a minimum mandatory three year sentence. The trial court there in sentenced the defendant to probation and a drug rehabilitation program relying on section 387.12 Fla. Stat. In reversing the defendant's sentence, the Ross Court held that §397.12 was not an exception to the mandatory sentencing requirements of the firearm sentencing statutes. 447 So. 2d at 1393.

For the reasons cited in Ross, §397.12 is not an exception to the minimum mandatory three year sentence called for upon conviction of violating §893.13(1)(e). As stated in Ross, section 893.13(1)(e)(1) is the later promulgated statute. It took effect as currently written on June 27, 1989. Ch. 89-524, Laws of Florida (1989). Section 397.12 first appeared in similar form in 1973 and took effect on July 1, 1973, Ch. 73-75 Laws of Fla. (1973). Therefore, section 893.13(1)(e)(1) should prevail as the last expression of legislative will. State v. Ross, 447 So. 2d at 1382. As stated in Ross, "[t]he Legislature, in passing the later statute, is presumed to know the earlier law. And, unless an explicit exception is made for an earlier statute, the late statute controls." Id.

Section 893.13(1)(e)(1) is unambiguous. The statute states that a defendant" "shall be sentenced to a minimum term of imprisonment of 3 calendar years and shall not be eligible for parole or statutory gain time. . ." (emphasis added); section 893.13(1)(e)(1) Fla. Stat. The statute's mandate is clear. "Well settled rules of construction require that a statute's terms be construed according to their plain meaning." 447 So. 2d at 1382-1383.

It is also significant that there is no express indication that the legislature intended section 397.12 to serve as an exception to section 893.13(1)(e)(1)'s mandatory term of imprisonment. Id. Section 893.15, by its terms, is limited possession. See, State v. Edwards, 456 So. 2d 575 (Fla. 2nd DCA

1985). The present case involves purchase within 1,000 feet of a school (R 23).

Petitioner contends that the trial court should have been allowed to depart downward from the guideline sentences under section 397.12, Fla. Stat. He argues that the legislative intent was not to punish someone like him nor remove the discretion of the trial court. Respondent disagrees.

Moreover, assuming that there is some inconsistency between section 397 and section 893, then the statutes should be given the effect designed for them unless a contrary intent clearly appears. State v. Gadsden County, 63 Fla. 620, 629, 58 So. 232, 235 (1912); State v. Dunmann, 427 So. 2d 166 (Fla. 1983). There is no positive or irreconcilable repugnancy between the provisions of section 397 and section 893. The first rule of statutory construction is that words are to be given their plain meaning. It is equally an action of statutory construction that an interpretation of a statute which leads to an unreasonable or ridiculous conclusion or a result obviously not designed by the legislature will not be adopted. Drury v. Harding, 461 So. 2d 104 (Fla. 1984). Furthermore, "when two statutes are inconsistent or in conflict, a more specific statute covering a particular subject is controlling over a statute provision covering the same subject *in more general terms*." American Healthcrop of Vero Beach, Inc. v. Department of Health and Rehabilitative Services, 471 So. 2d 1312, adopted 488 So. 2d 824 (Fla. 1st DCA 1985). In such a case, the more narrowly-drawn

statute operates as an exception to or qualification of the general terms of the more comprehensive statute. Floyd v. Bently, 496 So. 2d 862, review denied, 504 So. 2d 767 (Fla. 2d DCA 1986).

Section 397.12, Fla. Stat. (1989) refers to people convicted of a violation of any provision of Chapter 893. This statute is general in its terms as it refers in general to the law of the subject or generally to section 893. U.S. v. Rodriguez-Rodriguez, 863 F. 2d 830 (11th Cir. 1989). However, section 893.15, enacted in 1973 effective on July 1, 1973, states that a person who violates section 893.13(1)(f) or (1)(g) relating to possession may be required to participate in a drug rehabilitation program pursuant to chapter 397 at the discretion of the trial judge. Ch. 73-331, Laws of Fla. Statutes relating to the same subject and having the same purpose should be construed together if they are compatible, particularly where statutes are enacted at the same legislative session. Prichard v. Jax Liquors, Inc. 499 So. 2d 926, review denied, 511 So. 2d 298 (Fla. 1st DCA 1986).

Reading the two statutes in pari materia under the statutory construction principle of "ejusdem generis" where general words or principles, when appearing in conjunction with particular classes of things, will not be considered broadly, but will be limited to the meaning of the more particular and specific words, it is clear that the legislative intent was to limit section 397.12 to those defendants who violate section

893.13(1)(f) or (1)(g). This is consistent with the general principal mentioned above that when two statutes are inconsistent or in conflict, a more specific statute covering a particular subject is controlling over a statutory provision covering the same subject in more general terms.

Clearly, section 893.13(1)(e) is unambiguous. The statute states: "shall be sentenced to a minimum term of imprisonment of 3 calendar years and shall not be eligible for parole or statutory gain time..." Fla. Stat. section 893.13(1)(e). The statute's mandate is clear. Using well known statutory construction principals, one must conclude that section 397 is not an exception to the mandatory requirements of section 893.13(1)(e). Any other interpretation would lead to an absurd or unreasonable result and would render 893.13(1)(e) purposeless. State v. Webb, 398 So. 2d 820, 824 (Fla. 1981). What would be the purpose of having a minimum mandatory sentence if the defendant could declare his "heart felt" desire for rehabilitation and, thus, avoid the minimum mandatory? What defendant would not make such a declaration and what defense counsel would not have his client make such a declaration? The clear legislative intent behind section 893.13(1)(e) is to create a drug free zone around schools. This intent would be rendered meaningless were the minimum mandatory sentence so easily avoidable. Consequently, the plain meaning of the statute should prevail.

Based on the foregoing, Respondent maintains that, pursuant to Ross, supra, and the rules of statutory construction, §397 Fla.Stat. is not an exception to the mandatory requirements of section 893.13(1)(e)(1). The sentence imposed in the trial court was an illegal sentence, The Fourth district Court of Appeal was correct in reversing and remanding, Petitioner for resentencing to a term that includes the minimum term of imprisonment for three calendar years in accordance with Section 893.134(1)(e)(1)c.

CONCLUSION

Based upon the foregoing reasons and citations of authority it is respectfully requested that the lower court's decision be AFFIRMED.

Respectfullly submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

JAMES J. CARNEY
Assistant Attorney General
Florida Bar No. 465246
111 - Georgia Avenue, Room 204
West Palm Beach, FL 33401
(407) 837-5062

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by Courier to Anthony Calvello, Assistant Public Defender, 15th Judicial Circuit, Governmental Center, 9th Floor, 301 N. Olive Avenue, West Palm Beach, FL 33401, this 31st day of December, 1991.

Of Counsel