IN THE SUPREME COURT OF FLORIDA

JAMES REEVES, III,

Petitioner,

v. CASE NO. 79,386

STATE OF FLORIDA,

Respondent.

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MERITS BRIEF OF RESPONDENT

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CAROLYN J. MOSLEY, #593280
ASSISTANT ATTORNEY GENERAL

JAMES W. ROGERS, #325791
BUREAU CHIEF
CRIMINAL APPEALS DIVISION

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Respondent, State of Florida (hereinafter State), accepts the statement of the case and facts presented in the initial merits brief of the petitioner, James Reeves, III (hereinafter Reeves),

SUMMARY OF ARGUMENT

I. Section 775.084, Florida Statutes authorizes sentencing as an habitual violent felony offender where the felon has committed one prior enumerated violent felony followed by a non-violent felony within a specified period of time. The legislature created two classes of felons, and to distinguish one from the other, it necessarily had to name them. It called one class "habitual felony offender" and the other "habitual violent felony offender." Except as a means of distinguishing the two classes, the words used to label them are insignificant. The important factor is the definition of the class, not its name or label. The language defining the challenged class is plain and unambiguous

11. Section 775.084, Florida Statutes, which authorizes sentencing as an habitual violent felony offender, does not violate equal protection, due process, double jeopardy, or ex post facto under the state and federal constitutions.

The challenged classification is rationally related to a legitimate state interest. A person who commits an enumerated violant felony is too great of a risk to the public safety to be given another chance when he again violates the law. Therefore, when a violent felon commits another felony, irrespective of its character, he is subject to being habitualized. Since the triggering mechanism is the commission of a violent felony, the only relevant conduct is that which follows commission of this type of felony.

Enhanced punishment of repeat felony offenders is a legitimate exercise of the state's police power, and although not required to do so, the legislature chose the least restrictive means to achieve its goal. It could have made the statute applicable to all recidivists, but instead it narrowed the statute to cover only those persons demonstrating the greatest danger to the public safety.

The statute is not ex post facto, and neither does it impose double punishment for the same offense, because it is the future crime for which increased punishment is imposed.

ARGUMENT

ISSUE I

WHETHER SECTION 775.084, FLORIDA STATUTES AUTHORIZES SENTENCING AS AN HABITUAL VIOLENT FELONY OFFENDER FOR A NON-VIOLENT OFFENSE.

This issue was raised and ruled on in both the trial and appellate courts.

Legislative intent controls construction of statutes, and as an elementary principle of statutory construction, a court must accord primacy to the plain meaning of the language that was enacted. St. Petersburg Bank & Trust Co., 414 So.2d 1071, 1073 (Fla. 1982). In the amendment to the habitual offender statute, the legislature created two classes of felons, and it necessarily had to distinguish between them somehow. It named one class "habitual felony offender" and the other "habitual violent felony offender." The legislature was at liberty to name the classes whatever it desired. It easily could have named them, for example, "Class A Offender" and Class B Offender." If it had done so, there clearly would be no valid argument that the definition of the class was inconsistent with its name.

The important factor is the definition of the class, not its name or label. The legislature has defined one class of felons as those who commit two prior felonies plus a current felony within a specified period of time, and the other class of felons as those who commit one prior enumerated violent felony plus a current felony within a specified period of time. There is an

obvious trade off here, one additional felony for one violent felony, which takes into consideration the relative degrees of potential and actual harm to society. In either situation, however, the felon has demonstrated his status as a career criminal. s. 3, ch. 88-131, Laws of Florida (declaration of legislative purpase in amending statute).

In the instant case, by focusing on the name of the class and not its definition, Reeves has attempted to create ambiguity where none exists. In an analogous area of the law, a title may assist in removing ambiguities, but it cannot control plain words in the body of the statute. U.S. v. Fisher, 6 U.S. 214, 230 (1805); State v. Bussey, 463 So.2d 1141, 1143 (Fla. 1985).

Reeves' basic problem is that he disagrees with the threshold chosen by the legislature for the recidivist statute. Under our government with its separation of powers, Chiles v. Children, 589 So.2d 260 (Fla. 1991), neither his disagreement nor even a court's disagreement as to the wisdom of the statute provides a basis for invalidation, State v. Barnes, 17 F.L.W. S119 (Fla. February 20, 1992) and Barnes v. B. K. Credit Service, 461 So.2d 217 (Fla. 1st DCA 1984). Reeves' attempts to distort the plain meaning of this section should be rejected and the lower tribunal's decision affirmed.

ISSUE II

WHETHER SECTION 775.084, FLORIDA STATUTES AUTHORIZING SENTENCING AS AN HABITUAL VIOLENT FELONY OFFENDER VIOLATES EQUAL PROTECTION, DUE PROCESS, DOUBLE JEOPARDY, AND EX POST FACTO UNDER THE STATE AND FEDERAL CONSTITUTIONS.

In the trial court, Reeves raised the equal protection, due process, and ex post facto arguments, which were ruled on by the trial caurt. On appeal, Reeves raised only the equal protection argument. After the appellate court issued an unwritten per curiam affirmed opinion, Reeves moved for certification of all of the issues raised here. The State opposed the certification on the ground that they were never raised in the appellate court. The appellate court granted Reeves' motion.

EQUAL PROTECTION. The state and federal constitutions provide that no person may be denied the equal protection of the laws. Art. I, § 2, Fla. Const.; Amend. 14, U.S. Const. This means, in pertinent part, that the legislature must refrain from arbitrary classifications in legislation. Statutory classifications will be upheld "if the classification ... is rationally related to a legitimate state interest," Bankers Life & Casualty Co. v. Crenshaw, 486 U.S. 71 (1988), and the classification bears "some rational relationship to a legitimate state objective," Haber v. State, 396 So.2d 707, 708 (Fla. 1981).

The statutory classification at issue in the case at bar consists of felons who commit one prior enumerated violent felony plus a current felony within a specified period of time. Reeves

contends that this classification is underinclusive because it excludes felons who commit one prior felony plus a current violent enumerated felony. A person who commits an enumerated violent felony is too great of a risk to the public safety to be given another chance when he again violates the law. Therefore, when a violent felon commits another felony, irrespective of its character, he is subject to being habitualized. Whether the violent felon may have previously committed a nonviolent felony is irrelevant to this classification. The triggering mechanism is the commission of a violent felony; therefore, the only relevant conduct is that which follows commission of this type of felony. Felons who commit a violent felony followed by an unspecified felony and felons who commit a nonviolent felony followed by a violent felony are not similarly situated. They have in common the number and type of felonies committed, but they are different in that in only one of the situations is the violent felony followed by another felony.[1]

SUBSTANTIVE DUE PROCESS. The state and federal constitutions provide that no person may be denied due process of law. Art. I, § 9, Fla. Const.; Amend. 14, U.S. Const. Under state law, substantive due process requires that a "statute's

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[1] The legislature could have elected to include in the class all felons who commit two felonies, one of which is an enumerated violent felony, irrespective of the order in which the violent felony is committed. In its wisdom, however, it chose to do otherwise. The legislature is authorized to take a "piecemeal" approach and to deal with a general problem in incremental steps. Williamson v. Lee Optical, 348 U.S. 483 (1955).

purpose be for the general welfare" and 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." State v. Saiez, 489 So.2d 1125, 1128 (Fla. 1986). At one time, this substantial relation test was applicable in federal court, Mugler v. Kansas, 123 U.S. 623 (1887), but it has since fallen into disfavor, for in Griswold v. Connecticut, 381 U.S. 479, 482 (1965), the court stated, "We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions."

In the case at bar, the challenged statute authorizes enhanced punishment for a felon who commits two felonies within a specified period of time, the first of which is an enumerated violent felony. There is no question that enhanced punishment of felons is a legitimate goal within the scope of the state's police power. A state legislature "may inflict a deserved penalty merely to vindicate the law or to deter or to reform the offender or for all of these purposes," Pennsylvania Ex. Rel. Sullivan v. Ashe, 302 U.S. 51, 82 L.Ed. 43, 46 (1937), and it may increase the severity of the punishment for a repeat offender, Moore v. Missouri, 159 U.S. 673 (1895) and Cross v. State, 119 So. 380 (Fla. 1928). Although not required to do so, the legislature chose the least restrictive means to achieve its goal. The legislature could have made the statute applicable to all felons who commit another felony, but instead it narrowed the

statute to cover only those persons demonstrating the greatest danger to the public safety.

EX POST FACTO AND DOUBLE JEOPARDY. "[C]onviction under a habitual offender statute involves neither double jeopardy nor double punishment for the same offense," and neither does it "offend the constitutional prohibition against ex post facto laws." Washington v. Mayo, 91 So.2d 621, 623 (Fla. 1956). A "statute, imposing a punishment on none but future crimes, is not ex post facto," and neither does it "put the accused twice in jeopardy for the same offense." McDonald v. Massachusetts, 180 U.S. 311, 313 (1901) (defendant's sentence under habitual offender statute upheld). The argument that Reeves is being punished because of the nature of his prior crime is no different in kind than the age-old argument raised by defendants that they were being punished because of their prior crimes. It is the future crime for which increased punishment is imposed. One must bear in mind that it is the felon who decides what type of crimes he will commit, in what order, and how frequently.

CONCLUSION

Based on the foregoing discussion, this Court should affirm the decision of the district court of appeal and answer the certified questions yes and no respectively.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

Carolyn J. Mosley

CAROLYN J. MOSLEY, #593280
ASSISTANT ATTORNEY GENERAL

Carolyn J. Mosley for

JAMES W. ROGERS, #325791
BUREAU CHIEF
CRIMINAL APPEALS DIVISION

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy *of* the foregoing merits brief has been furnished by U.S. Mail to Steven A. Been, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida, 32301, this 1st day of April, 1992.

Carolyn J. Mosley
Assistant Attorney General