Supreme Court of Florida

ORIGINAL

No. 79,386

JAMES **REEVES, 111,** Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[December 3, 1992]

OVERTON, **J.**

We have for **review** Reeves v. State, **593 So. 2d** 232 (Fla. **1st DCA** 1991), **in which the district court affirmed Reeves' sentence as a habitual violent felony offender and certified the following questions as** being **of great public importance:**

> **1. Does section 775.084, Florida Statutes** (1989), **authorize habitual felon sentencing** for **a criminal defendant** who **has previously been convicted of a violent offense enumerated in the statute, but who is currently being sentenced** for **a non-violent offense?**

> 2. If section 775.084, Florida Statutes (1989), authorizes habitual felon sentencing for a criminal defendant who is currently being sentenced for a non-violent offense, does the statute violate the constitutional principles of equal protection, due process, double jeopardy, or ex post facto?

Id. at 232.[1] We answer the first question in the affirmative, the second question in the negative, and approve the decision of the district court.

In Tillman v. State, No. 78,715 (Fla. Nov. 19, 1992), we recently held that section 775.084(1)(b), Florida Statutes (1989), does not violate the constitutional protections against double jeopardy. In Ross v. State, 601 So. 2d 1190 (Fla. 1992), we held that section 775.084(1)(b) does not violate equal protection or due process. This court has also rejected ex post facto challenges to the habitual offender statute in Reynolds v. Cachran, 138 So. 2d 500 (Fla. 1962); Washington v. Mayo, 91 So. 2d 621 (Fla. 1956); and Cross v. State, 96 Fla. 768, 119 So. 380 (1928).

It is so ordered.

McDONALD, SHAW, GRIMES and HARDING, JJ., concur.
KOGAN, J., dissents with an opinion, in which BRRKETT, C.J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, **IF** FILED, DETERMINED.

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[1] We have jurisdiction. Art. V, §3(b)(4), Fla. Const.

KOGAN, J., dissenting.

I dissent on the basis of my dissenting opinion in Tillman v. State, No. 78,715 (Fla. Nov. 19, 1992). The petitioner has only been convicted of one violent crime and therefore cannot be a habitual violent felony offender,

BARKETT, C.J., concurs,

Application for Review of the Decision *of* the District Court of Appeal – Certified Great Public Importance

First District - Case No. 90-3336

(Duval County)

Nancy A. Daniels, Public Defender and Steven A. Been, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida,

for Petitioner

Robert A. Butterworth, Attorney General; and James W. Rogers, Bureau Chief, Criminal Appeals, Assistant Attorney General and Carolyn J. Mosley, Assistant Attorney General, Tallahassee, Florida,

for Respondent