IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,455

SALVATORE VOLA,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

****

APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL,
WEST PALM BEACH, FLORIDA

****

ANSWER BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF CITATIONS

CASE **PAGE**

STATUTES

OTHER AUTHORITIES

PRELIMINARY STATEMENT

Respondent was the Appellant in the Fourth District Court of Appeal and the Prosecution in the Circuit Court of the Seventeenth Judicial Circuit, Criminal Division, in and for Broward County, Florida. The 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 be referred to as Mr. Adderly.

The following symbols will be used:

"R" Record on Appeal

All emphasis has been added unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts as given to the extent that they are true, accurate and nonargumentative.

SUMMARY OF 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 §893.13(1)(e).

ARGUMENT ON APPEAL

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

At bar, Petitioner pled guilty to purchasing cocaine within 1,000 feet of a school in violation of §893.13(1)(e)(1989) (R. 4, 6, 17). Section 893.13(1)(e)1 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 on §397.12 Fla. Stat. to circumvent the language of the statute imposing the three year mandatory sentence (R. 49-52). Petitioner was therefore sentenced to two years community control and drug rehabilitation in clear contravention of §893.13(1)(e)1. As such, the trial court erred in imposing a downward departure sentence.

The Fourth District Court of Appeal held that section 397.12 does not provide an exception to the minimum mandatory sentencing requirement of section 893.13(1)(e)1. 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 therein sentenced the defendant to probation and a drug rehabilitation program relying on §397.12 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.

Likewise at bar, and for the same 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 Fla. (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.

Clearly, 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); §893.13(1)(e)1 Fla. Stat. The statute's mandate is therefore 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.

Also, it is significant that there exists 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 893.13, by its terms, is limited to

possession. See, State v. Edwards, 456 So.2d 575 (Fla. 2d DCA 1985). The present case involves purchase within 1,000 feet of a school.

Petitioner contends in his brief that the trial court should be allowed to downwardly depart from the guideline sentences under section 397.12 Fla. Stat. He argues that surely the legislative intent was not to punish someone like himself nor to remove the discretion of the trial court. Respondent disagrees with the Petitioner's reasoning.

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 axiom 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 statutory provision covering the same subject in more general terms." American Healthcorp of Vero Beach, Inc. v. Department of Health and Rehabilitative Services, 471 So.2d 1312 (Fla. 1st DCA 1985) adopted 488 So.2d 824 (Fla.

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. Bentley, 496 So.2d 862 (Fla. 2d DCA 1986) review denied 504 So.2d 767 (Fla. 1986).

Section 397.12, Fla. Stat. (1989) refers to those people who have been convicted of a violation of any provision of Chapter 893. This is a statute which 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, which was enacted in 1973 and became 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 (Fla. 1st DCA 1986), review denied, 511 So.2d 298 (Fla. 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 also 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)1 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)1. 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)1. Any other interpretation would lead to an absurd or unreasonable result and would render 893.13(1)(e)1 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 must prevail.

Petitioner's citation to Chapter 953 Fla. Stat., is misplaced for several reasons. Initially, Respondent notes that Section 953.002 was not in effect at the time of Petitioner's

crime and is therefore inapplicable. See State v. Knowles, 553 So.2d 391, 392 (Fla. 4th DCA 1989) (sentencing statute in effect on date of crime controls).

Furthermore, Section 953.002 does not indicate that it applies to drug offenses committed within 1000 feet of a school. Section 893.13(1)(e)1 is unambiguous. The statute states that anyone purchasing a controlled substance within 1000 feet of a school: "shall be sentenced to a minimum term of imprisonment of three calendar years and shall not be eligible for parole or statutory gain time ...." There is no indication that it was superceded by Section 953.002. See State v. Diers, 532 So.2d 1271, 1272 (Fla. 1988) (in construing statutes, specific controls over general).

Respondent agrees that substance abuse coupled with amenability to rehabilitation has been found a valid reason for departure under certain circumstances. However, none of the cases cited by Appellee hold that a trial judge may disregard a mandatory minimum in sentencing a defendant. Cf. State v. Niemco, 505 So.2d 670, 671 (Fla. 5th DCA 1987) (mandatory minimum sentence takes precedence over guidelines sentence while sentence may appear harsh, legislature has indicated its intention that trial court not have discretion to ameliorate it); State v. Leatherwood, 561 So.2d 559 (Fla. 2nd DCA 1990) (court was required to impose mandatory minimum sentence even though it exceeded sentencing guidelines) and Rose v. State, 508 So.2d 546, 548 (Fla. 3rd DCA 1987); rev. denied, 515 So.2d 230 (Fla. 1987) (trial judge was without jurisdiction to mitigate mandatory sentence).

The trial judge erred in failing to sentence Petitioner to a three year mandatory minimum sentence. The decision of the Fourth District Court of Appeal must be affirmed.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by Courier to: ALLEN J. DeWEESE, Assistant Public Defender, Fifteenth Judicial Circuit of Florida, the Governmental Center, 301 N. Olive Avenue/9th Floor, West Palm Beach, Florida 33401, on this 14 day of May, 1992.

Of Counsel

rdb