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SID J. WHITE
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CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

TERRY LITE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 79636
FOURTH DCA CASE NO. 91-271

PETITIONER'S BRIEF ON JURISDICTION

RICHARD L. JORANDBY
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AUTHORITIES CITED

PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida, and the Appellee in the District Court of Appeal, Fourth District. Respondent was the prosecution and Appellant in the lower courts. The parties will be referred to as they appear before this Court.

The symbol "A" will denote Appendix.

STATEMENT OF THE CASE AND FACTS

Petitioner pled guilty to possession of cocaine. As a consequence of pleading guilty to possession of cocaine, Petitioner's driver's license was to be suspended for two years pursuant to Section 322.055(1), Florida Statutes (Supp. 1990). At the sentencing hearing the trial court found Section 322.055(1) unconstitutional as violative of both substantive due process and equal protection under the Florida and Federal Constitutions (A1).

On January 22, 1992, the Fourth District Court of Appeal reversed the ruling of the trial court and expressly found that Section 322.055(1) is constitutional (A1-A5). On January 31, 1992, Petitioner filed a motion for rehearing and certification. On February 28, 1992, the Fourth District Court of Appeal denied Petitioner's motion for rehearing and certification (A 6). Petitioner timely filed a notice to invoke this Court's discretionary jurisdiction.

SUMMARY OF THE ARGUMENT

The district court's opinion expressly declares Section 322.055(1), Florida Statutes (Supp. 1990) valid. This is a decision with statewide impact because the loss of driving privileges for conviction of certain drug offenses is a disability to people all across the State of Florida, There is no requirement in the statute that a motor vehicle be used in the commission of the offense. Moreover, the statute as written simply makes no sense.

ARGUMENT

PETITIONER HAS PROPERLY INVOKED THE JURISDICTION OF THIS COURT SINCE THE OPINION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY DECLARES A STATE LAW VALID

Petitioner invokes this Court's jurisdiction under Article V, Section 3(b)(3), Florida Constitution (1980) and Fla.R.App.P. 9.030(a)(2)(A)(i). Article V, Section 3(b)(3) provides that review may be sought of decisions of district courts of appeal that "expressly declare valid a state statute."

In the present case, the Fourth District Court of Appeal expressly found that Section 322.055(1), Florida Statutes (Supp. 1990) is constitutional. This Court should exercise its discretionary jurisdiction in the instant case as the Fourth District Court of Appeal's decision is a decision with statewide impact because the loss of driving privileges is a disability to people all across the State of Florida.

The due process problem with Section 322.055(1) is that there is no requirement that a motor vehicle be used in the commission of the offense for a trial court to refer a driver's record of conviction to the Department of Highway Safety and Motor Vehicles for mandatory revocation of a driver's license. Cf. Section 322.26(3), Florida Statutes (1989); See also People v. Linder, 535 N.E. 2d 829 (Ill. 1989). This constitutional infirmity in Section 322.055(1) is analogous to the situation where a trial court imposes a condition of probation unrelated to the defendant's conviction. See Stonebraker v. State, 17 F.L.W. D659 (Fla. 2d DCA March 6, 1992).

Moreover, from an equal protection as well as logical standpoint, Section 322.055(1) simplymakes no sense. Under Section 322.055(1), one could possess one gram of cocaine in his home which wouldmandate a driver license suspension. Under the statute, one could deliver 10 grams of cocaine from his motor vehicle and the statute would not mandate a driver's license suspension. Additionally, two drug dealers standing side by side on a street corner could conduct drug transactions; one for consideration (sale) and the other without consideration (delivery). Sale under the statute mandates a driver license suspension yet delivery does not. A seller standing on a street corner would lose his driver's license but a purchaser in a motor vehicle would not.

Because the opinion of the Fourth District expressly declares valid a State statute, Petitioner respectfully requests this Honorable Court to grant his petition for review and reverse the decision of the lower court.

CONCLUSION

The decision of the Fourth District herein expressly declares valid a State statue. This Honorable Court should grant Petitioner's request for jurisdiction and hear this cause on the merits.

Respectfully submitted,

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Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to James J. Carney, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida 33401 by courier this 30 day of March, 1992.

Of Counsel

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JANUARY TERM 1992

STATE OF FLORIDA,

Appellant,

v.

TERRY LITE,

Appellee.

CASE NO. 91-0271.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

Opinion filed January 22, 1992

Appeal from the Circuit Court for Broward County; Richard D. Eade, Judge.

Robert A. Butterworth, Attorney General, Tallahassee, and James J. Carney, Assistant Attorney General, West Palm Beach, for appellant.

Richard L. Jorandby, Public Defender, and Robert Friedman, Assistant Public Defender, West Palm Beach, for appellee.

PER CURIAM.

Appellee, Terry Lite pled guilty to possession of cocaine in violation of section 893.03(2)(a)4, Florida Statutes (1990). Pursuant to section 322.055(1), Florida Statutes (Supp. 1990), appellee's license was required to be suspended for two years. During appellee's sentencing, the trial court refused to enforce section 322.055(1), finding it unconstitutional as violative of both substantive due process and equal protection under the Florida and Federal Constitutions. The court reasoned

that the statute did not require the showing of a relationship between the statute's enumerated offenses and the use of a motor vehicle, and further, not all drug offenders were subject to the statute's license revocation sanction. See Art. I, §§ 2, 9 Fla. Const.

This court recently reversed a trial court's similar refusal to apply section 322.055(1) in State v. Lawton, 588 So.2d 72 (Fla. 4th DCA 1991). We take this opportunity to explicitly state that which is implicit in the result reached in Lawton. In so doing, we reaffirm our decision that section 322.055(1) is constitutional, and therefore reverse and remand for the trial court to enforce the provisions of the statute.

Section 322.055(1), provides in pertinent part:

> upon the conviction of a person 18 years of age or older for possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, the court shall direct the department to revoke the driver's license or driving privilege of the person. The period of such revocation shall be 2 years or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Health and Rehabilitative Services. However, the court may, in its sound discretion, direct the department to issue a license for driving privileges restricted to business or employment purposes only, as defined by § 322.271, if the person is otherwise qualified for such license.

Because the right to drive is not a fundamental right, the test to be applied to determine if the statute violates due process is whether the statute bears a reasonable relationship to

a permissible legislative objective and is not discriminatory, arbitrary, or oppressive. See Lasky v. State Farm Ins. Co., 296 So.2d 9 (Fla. 1974); Potts v. State, 526 So.2d 104 (Fla. 4th DCA 1987), approved, 526 So.2d 63 (Fla. 1988), cert. denied 488 U.S. 870, 109 S.Ct 178, 102 L.Ed.2d 147 (1988). Here, the permissible legislative objective is to combat substance abuse and crime. See generally Ch. 87-243, Laws of Fla. Accordingly, the means employed -- revoking drivers' licenses of those convicted of possession, sale, or trafficking in a controlled substance -- is rationally related to that goal because such punishment will deter the incidence of illicit drug possession, sales, and trafficking, curtail the transportation of illegal drugs, and reduce the mobility of those involved in drugs. The fact that no relationship is required between a vehicle and the listed offenses does not render the statute constitutionally infirm since the requisite rational relationship exists between revoking the drivers' license and the legislative goal of combatting crime and substance abuse. See Potts v. State. As stated in State v. Yu, 400 So.2d 762, 765 (Fla. 1981), appeal dismissed, sub nom. Wall v. Florida, 454 U.S. 1134, 102 S.Ct 988, 71 L.Ed.2d 286 (1982), the "legislature has broad discretion in determining necessary measures for the protection of the public health, safety and welfare, and we may not substitute our judgment for that of the legislature as to the wisdom or policy of the legislative act." Finally, the statute's two year period of license revocation is not unduly oppressive. Section 322.055(1) reads that the revocation period "shall be 2 years or until the person is

evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Health and Rehabilitative Services." Furthermore, the court in its discretion may direct the Department of Motor Vehicles to issue a license for driving privileges restricted to business or employment purposes only. Id.

Equally without merit is the argument that the statute violates equal protection principles because it does not treat all drug offenders similarly. Pursuant to section 322.055(1), only those convicted of possession, sale or trafficking of controlled substances must have their licenses revoked. Once again, since there is no fundamental right to drive and the statute is not directed toward a suspect class, section 322.055 must be analyzed under a rational basis standard. See Florida High School Activities Ass'n v. Thomas, 434 So.2d 306, 308 (Fla. 1983); Wells v. Malloy, 402 F.Supp. 856, 858 (D. Vt. 19751, affirmed, 538 F.2d 3178 (2d Cir. 1976). To meet the rational basis standard it must be conceivable that the statutory classification complained of bears some rational relationship to a legitimate state purpose. See Id.; see also Gluesenkamp v. State, 391 So.2d 192, 200 (Fla. 19801, cert. denied, 454 U.S. 818, 102 S.Ct. 98, 70 L.Ed.2d 88 (1981). Additionally, the legislature has wide discretion in creating statutory classifications, and there is a presumption in favor of validity. See State v. Leicht, 402 So.2d 1153, 1154 (Fla. 1981), cert. denied 455 U.S. 989, 102 S.Ct. 1611, 71 L.Ed.2d 848 (1982). Moreover, equal protection is not violated where a permissible classification includes one, but not others who might

have been included in the broader classifications, as long as those within the legally formed class are accorded equal treatment under the law creating the classification. See State v. White, 194 So.2d 601, 603 (Fla. 1967); Loxahatchee River Envtl Control Dist. v. School Board, 496 So.2d 930, 938 (Fla. 4th DCA 1986), approved, 515 So.2d 217 (1987) (statutorily created classification need not be perfect, nor must legislature, in interest of equal protection, either solve all facets of a problem at once or leave problem wholly unresolved).

Applying these principles to the instant case, section 322.055(1) does not violate equal protection even though it does not encompass all drug offenders. Consequently, we reaffirm our view that section 322.055(1) is constitutional and reverse and remand for the trial court to enforce the statute.

WARNER, POLEN and GARRETT, JJ., concur.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX A, WEST PALM BEACH, FL 33402

STATE OF FLORIDA,

Appellant,

v. CASE NO. 91-0271

TERRY LITE,

Appellee.

_____/

February 28, 1992

BY ORDER OF THE COURT:

ORDERED that appellee's motion filed January 31, 1992, for rehearing and certification to the Florida Supreme Court is hereby denied.

I hereby certify the foregoing is a
true copy of the original court order.

Marilyn Beuttenmuller

MARILYN BEUTTENMULLER,
CLERK.

cc: Public Defender 15
Attorney General-West Palm Beach

/CH

RF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Appendix has been furnished to James J. Carney, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida 33401 by courier this 20 day of March, 1992.

Of Counsel