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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,  
Appellant,

vs.

Case No. 79,883

ROBERT GLOVER,  
Appellee.

**FILED**  
SID J. WHITE  
AUG 20 1992  
CLERK, SUPREME COURT  
By *[Signature]* Chief Deputy Clerk

**FILED**  
SID J. WHITE  
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PETITIONER'S BRIEF ON MERITS

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STATEMENT OF THE CASE AND FACTS

Glover was convicted for attempted first-degree murder with a firearm, and for robbery with a firearm, both **as** charged. (R 251-2). Classified as an habitual felon based on numerous prior felonies proved up at sentencing (R 220-5, 229), **he** received two concurrent sentences of 40 years; each with a three-year minimum for firearm use. (R 232 .

On appeal to the First District, Glover challenged his two sentences on the ground that **the** habitual felon statute was facially inapplicable. That court, relying on Burdick v. State, 594 So.2d 267 (Fla. 1992), upheld the sentence imposed for the robbery, a first-degree felony punishable by life; and vacated the sentence for attempted murder. Glover v. State, 17 F.L.W. D1019 (Fla. 1st DCA Apr. 15, 1992).

The opinion **below** was issued April 15, 1992. On May 15, **the** State of Florida filed its notice to invoke this Court's discretionary jurisdiction, based on conflict with Lamont v. State, 17 F.L.W. D507 Fla. 3d DCA Feb. 18, 1992)(*en banc*). By order dated August 11, **this** Court accepted jurisdiction.

### SUMMARY OF THE ARGUMENT

Reading all relevant provisions together, the habitual felon statute must apply to life felonies. To hold otherwise would lead to the unreasonable result that defendants committing the most grievous non-capital offenses (i.e., life felonies) could not be **treated** as habitual felons, whereas defendants committing any less serious offense could be.

The fact that the statute does not specifically enhance sentences for life felons does not preclude application of the remainder of the statute to such defendants. Moreover, upon being declared habitual and thus removed from sentencing under the guidelines, a defendant whose present offense is a life felony is subject to a life sentence (or term of years up to 40) under §775.082(3) a), Florida Statutes; making further enhancement unnecessary

In short, it would be very unreasonable -- and contrary to the obvious legislative intent -- to allow qualifying life felons to escape all sanctions imposed by the habitual felon statute simply because the Legislature did not further enhance the sentences for life felonies in §775.084(4). This Court must approve Lamont, and disapprove the opinion below to the extent of conflict; thereby upholding Glover's sentence.

## ARGUMENT

### ISSUE

WHETHER THE ABSENCE OF LENGTHIER SENTENCES FOR QUALIFYING LIFE FELONS FREES SUCH DEFENDANTS FROM ALL SANCTIONS OF THE HABITUAL FELONY OFFENDER STATUTE

Seldom is a case so thoroughly and readily resolved by a single principle of law: that statutes should not be interpreted to reach unreasonable results, particularly when such results frustrate the obvious legislative intent. Very recently, this Court has declared that the "State is entirely justified in enhancing an offender's present penalty . . . based on an extensive or violent criminal history." Ross v. State, 17 F.L.W. §367, 368 (Fla. June 18, 1992). See, Barfield v. State, 594 So.2d 259, 261 (Fla. 1992) ("Moreover, Florida's habitual offender statute provides a statutory means of dealing with persistent criminal conduct."). The statute's purpose, to protect society against recidivist felons, would be defeated if those who commit life felonies can evade its sanctions.

Glover's criminal history is extensive, including thirteen prior felonies, mostly burglaries. (R 260-314). His present offenses were both committed with a firearm, and -- had they been prior felonies -- would have been deemed "violent" by §775.084(1)(b), Florida Statutes. Glover is exactly the type defendant for which the statute was so reasonably designed.

Nevertheless, simply because small parts of the statute, §775.084(4)(a) and (b), do not expressly enhance sentences for defendants whose current offenses are life felonies, Glover claims that he cannot be treated as an habitual felon for the attempted murder offense. While he is correct in his reading only of §775.084(4)(a) and (b), he is badly wrong otherwise. He ignores the fact that all other parts of 8775.084 address all felonies generally, without exclusion.<sup>2</sup> He never attempts to explain why life felons -- whose offenses are the most serious of all the non-capital crimes -- should avoid the habitual felon statute's sanctions altogether, while all lesser felons are subject to it.

A brief scenario illustrates the absurdity of Glover's position. He, of course, claims that his eleven past felonies plus his current violent offense of attempted murder with a firearm

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<sup>1</sup> Glover's second offense, robbery with a firearm, is a first-degree felony punishable by life under §812.13(2)(a). In Burdick, *supra*, this court held that such offenses were subject to enhancement under the statute. 594 So.2d at 268. Since Glover's two sentences are of equal length and concurrent, and he does not challenge either conviction, he is not harmed by being treated **as** an habitual felon for both. Were it not for the need to resolve conflict, Glover's complaint could be disregarded under the concurrent sentence doctrine, Jacobs v. State, 389 So.2d 1054, 1056 (Fla. 3d DCA 1980), *rev. denied*, 397 So.2d 778 (Fla. 1981).

<sup>2</sup> The State assumes that the failure to enhance sentences for capital felonies does not trouble the court, as the only two penalties provided by §775.082(1) for the first time capital felon (death or life without parole for 25 years) are greater than the maximum penalties under the habitual felon statute. Consequently, there was no need to enhance those penalties,



should not subject him to treatment as an habitual felon. Imagine, in contrast, a young adult who steals **property** worth just enough to be convicted for felony theft. Several years later he passes a bad check and is convicted. Four years after that, he is convicted for passing another bad check. In the course of perhaps 10 years, that defendant has been convicted of a minor theft and two bad checks. He could be treated as an habitual felon and receive a 10-year sentence with greatly reduced gain time, whereas Glover could not. This would be absurd, and would defeat the declared legislative intent<sup>3</sup> to protect society from recidivist felons committing the most serious of crimes.

Another scenario badly erodes Glover's position. Suppose he had been charged only with robbery with a weapon, neither a firearm nor deadly, and so convicted. Alternatively, suppose the jury had pardoned him down to robbery with a mere weapon. In either case, he would have been convicted **far** a first-degree felony under §812.13(2)(b). He would then be expressly subject to the penalties in §775.084(4)(a)1. Instead, Glover maintains his current life felony must carry a guidelines sentence.

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<sup>3</sup> See, §775.0841, Florida Statutes, declaring the Legislature's intent **as** to "repeat felony offenders." This statute was passed in the same act, ch. 88-131, Laws of Florida, in which the provisions at issue were enacted.

All of **these** points illustrate the unreasonableness of Glover's position below. The statute must not be so construed. Dorsey v. State, 402 So.2d 1178, 1183 (Fla. 1981) ("In Florida it is a well-settled principle that statutes must be construed so as to avoid absurd results," [citations omitted]); State v. Webb, 398 So.2d 820, 824 (Fla. 1981). Finally, this Court noted in Burdick, *supra*, that excluding first-degree felonies punishable by life from the habitual felony offender statute would pressure a state attorney to prosecute an accused for a lesser offense simply because that offense would be subject to habitual offender enhancement. *Id.*, 594 So.2d at 269. Exactly the same logic applies to life felonies. The State should not be forced to "undercharge" a defendant simply to make the habitual felon statute available.

The State sought review in this court based on express and direct conflict with Lamont, *supra*. (*See*, State's jurisdictional brief at p. 5-6). Notably, Glover agreed that such conflict existed. (*See*, Glover's jurisdictional brief at p. 3-4).

Because it supports a reasonable interpretation of the habitual felon statute, and is correctly decided in its own right, Lamont must be approved; and the decision below disapproved to the extent of the conflict. In Lamont, the Third District determined that **the** defendant, who was convicted of sexual battery with a weapon pursuant to §794.011(3), Florida Statutes, was subject to

sentencing under the habitual felony offender statute. In rejecting his claim that life felonies are not subject to the statute, the court determined:

{t}o follow the defendants' construction of the Act would defeat the expressed legislative intent for providing enhanced penalties for career criminals in order to deter criminal conduct. It is not rational, to say the least, to interpret the statutes so that those career criminals who commit the most serious of felony crimes are not subject to enhanced punishment under the habitual offender statute, while those that commit less serious crimes are included within its scope.

*Id.* at D508. The court further **noted** that §794.011(3), the substantive statute under which Lamont was convicted, specifically provided for sentencing under 8775.084. The court thus concluded **that:**

{t}he legislature would not have specifically indicated in each statute that Section 775.084 was to be used in determining a defendant's sentence if it had intended to exclude defendants convicted of such felonies from the scope of the Act.

*Id.* (footnote omitted). Here, Glover was convicted for robbery with a firearm under §812.13(2)(a), which also expressly cross-references 8775.084.

After addressing these aspects of the statute, Lamont **concluded:**

In order to give effect to the legislative intent, and to avoid a construction of the statutory language which would lead to an absurd result, our analysis must focus upon a consideration of the Act as a whole. Accordingly, a far more reasonable construction of the statute which would give effect to the legislative intent of deterring repeat offenders, would be to recognize that extended terms of imprisonment for life felons are authorized under subsection (4)(e) of the statute. Thus, a more accurate analysis of the applicability of the act would be as follows. Once a defendant has been classified as a habitual felony offender, then "the court may impose an extended term of imprisonment as provided in this section. . . ." §775.084(1)(b), Fla. Stat. (1989). Referring to subsection (4)(c) "in this section," the court may then sentence life felony defendants to life imprisonment because subsection (4)(e) of the statute removes habitual violent felony offenders from the sentencing guidelines, makes them ineligible for parole and removes their eligibility for gain-time (except that specified).

*Id.* (footnotes omitted).

As noted above, Glover was convicted under a statute expressly providing for punishment under §775.084. Thus, even though 5775.084 does not list **life** felonies in subsection (4)(a), the Legislature clearly intended to make habitual felons convicted for robbery with a firearm subject to the gain-time restrictions, and particularly the exemption from the sentencing guidelines, specified by §775.084(4)(e). A holding by this court to the contrary would lead to the absurd result, never intended by the Legislature, that habitual felons convicted of the most serious crimes benefit from the short terms of imprisonment and excessive

gain-time of the sentencing guidelines, while **those** convicted of all lesser felonies do not. Furthermore, such holding would lead to the greater absurdity that repeat offenders of serious crimes would be exempt from classification as habitual felons by virtue of the fact that they habitually commit life felonies. This court must avoid such a result.


#### CONCLUSION

**The** decision below must be disapproved, to the **extent** it exempts habitual felons whose present crimes are life felonies from §775.084, Florida Statutes. Conversely, Lamont must be approved. Glover's sentence for attempted murder with a firearm would thus be upheld.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on the Merits has been furnished by U.S. Mail to MS. PAULA SAUNDERS, Assistant Public Defender, Office of the Public Defender, Second Judicial Circuit of Florida, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 20<sup>th</sup> day of August, 1992.

  
\_\_\_\_\_  
CHARLIE MCCOY