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CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 79,883

ROBERT GLOVER,

Respondent.

_____ /

PETITIONER'S REPLY BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JAMES W. ROGERS
BUREAU CHIEF
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0325791

CHARLIE MCCOY
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0333646

DEPARTMENT OF LEGAL AFFAIRS
The Capitol
Tallahassee, FL 32399-1050
(904) 488-0600

COUNSEL FOR APPELLEE

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SUMMARY OF ARGUMENT

One part of the habitual felon statute (authorizing lengthier sentences) does not expressly address life felonies. This does not prevent application of the other provisions to Glover. As a convicted felon who does not dispute his guilt, he is not entitled to the presumption of innocence that would invoke strict construction of the statute. Strict construction also is not appropriate, as the plain meaning of all other parts of the statute does not exclude life felonies.

Most damaging to Glover's position and the opinion below is the absurd result. His interpretation of the statute would exempt life felons from all habitual offender sanctions, while all other noncapital felonies would remain subject to statute.

This court must declare that all parts of the habitual felon statute except §775.084(4)(a) and (b) apply to **life** felons. To such extent, Lamont must be approved and the opinion below disapproved; thereby upholding Glover's sentence.

ARGUMENT

ISSUE

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

Reading a small part of the habitual felon statute correctly, **Glover** interprets the larger statute absurdly. He correctly recognizes that §775.084(4)(a) and (b) do not specify lengthier sentences for an habitual felon whose current offense is a life felony. He ignores the fact that all other parts of the statute include all non-capital **felons**.

Therein lies the absurdity of Glover's argument. If he were correct, the absolute worst of the noncapital felons - those who commit life felonies - would escape the other sanctions of the habitual felon statute. In the meantime, defendants convicted of other felonies (first PBL, first, second, and third) could be treated **as** habitual felons. This court must not embrace Appellant's absurd position.

The State will first address one of Glover's points out of **order**. He claims that the statute - actually, only

§775.084(4) - is plain and unambiguous. (answer brief, p. 6). If Glover is correct, then there is no need to reach the point he maintains throughout: that strict construction requires resolution in his favor. See State v. Egan, 287 So.2d 1, 4 (Fla. 1973) (construing statute adopting common law crimes, and declaring that when "legislative intent as evidenced by a statute is plain and unambiguous, then there is no necessity for any construction or interpretation of the statute"); and Steinbrecher v. Better Construction Co., 587 So.2d 492, 493 (Fla. 1st DCA 1991) ("[W]here the language of a statute is clear and unambiguous, courts may not resort to rules of statutory construction.").

Next, and perhaps to Glover's surprise, the State agrees that §775.084(4)(a) and (b) do not expressly mention life felonies. With all due respect, the best reply is: "so what?" Simply because part of the statute does not expressly address life felonies does not preclude the remainder of the statute from applying.

Glover's main argument is that all of §775.084 must be strictly construed to exclude life felonies, simply because two paragraphs [§775.084(4)(a) and (b)] expressly mention only third, second and first degree felonies. Such argument reveals misunderstanding of the rationale of the principle of strict construction.

The rationale for strict construction is that any person - before conviction - must be presumed innocent. Any

doubt as to whether such person was adequately informed that certain conduct was criminal must be resolved in favor of the accused. Strict construction in a criminal context is actually concern for due process, that a person must be fairly informed.

Once a person has been convicted, there can be no presumption of innocence. On the contrary, there is a verdict and judgment of guilt. Therefore, the rationale for strict construction has no relevance to a convicted defendant complaining only about a penalty.

In this connection, the Legislature has set out in §775.021, Florida Statutes, the rules of construction it intends courts to use in interpreting criminal statutes. By its terms, §775.021(1) limits the favorable construction of criminal statutes "to the accused," i.e., to the guilt phase. Similarly, §775.021(4)(b) specifically prohibits application of the rule of lenity to the sentencing phase. Clearly, the rule of lenity is only applicable to statutes addressing the guilt phase.

As said above, §775.084(4)(a) and (b) do not expressly address sentences for life felons. However, the plain meaning of §775.084(4)(c) and (e) does not exclude any felonies. It cannot be presumed that the Legislature deliberately excluded life felonies from all sanctions of the habitual felon statute. To do so would alter the plain meaning of these provisions something this court cannot do.

See State v. Barnes, 595 So.2d 22, 24 (Fla. 1992) (The courts have "no authority to change the plain meaning of a statute where the legislature has unambiguously expressed its intent.").

Since the plain meaning of §775.084(4) (a) and (b) does not exclude life felonies, the principle of strict construction does not apply. Glover misunderstands this.

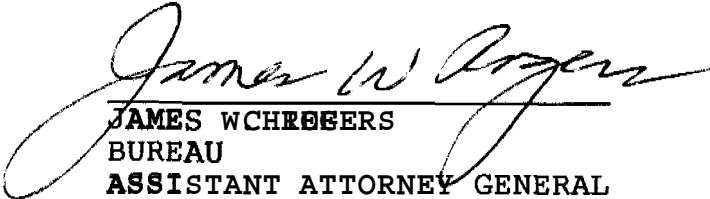
Section 775.084(4)(c) unambiguously declares that "any time when it appears to the court that the defendant is a habitual felony offender or a habitual violent felony offender, the court shall make that determination as provided in subsection (3)." That is exactly what the trial court did as to Glover. He cannot complain.

CONCLUSION


The decision below must be disapproved to the extent it allows habitual felons whose present crimes are life felonies to avoid §775.084 altogether. To equal extent, LaMont v. State, 597 So.2d 823 (Fla. 3d DCA 1992) must be approved. Glover's sentence must be upheld.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



JAMES WCHREEBERS
BUREAU
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0325791



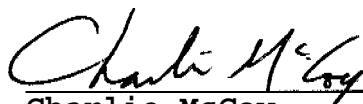
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ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0333646

DEPARTMENT OF LEGAL AFFAIRS
The Capitol
Tallahassee, FL 32399-1050
(904) 488-0600

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to Paula Saunders, Assistant Public Defender, Leon County Courthouse, Fourth Floor, North, 301 South Monroe Street, Tallahassee, Florida 32301, this 23rd day of September, 1992.



Charlie McCoy
Assistant Attorney General