IN THE SUPREME COURT OF FLORIDA

RONALD L. PETIT,

Petitioner,

v. CASE NO. 83,698

STATE OF FLORIDA,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM THE
FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
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COUNSEL FOR RESPONDENT

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SUMMARY OF ARGUMENT

In enacting Section 39.061, Florida Statutes (Supp. 1990), the legislature reasonably delegated to HRS the task of classifying all of its juvenile detention facilities' restrictiveness levels. The legislature made it a third degree felony to escape from a juvenile detention facility of restrictiveness level VI or higher. After October 1, 1990, the trial court judge made the determination as to which restrictiveness level facility the juvenile offender was to be committed. Section 39.052(3)(e)3, Florida Statutes (Supp. 1990).

The trial judge committed Petitioner to Volusia House, a restrictiveness level VI facility. When Petitioner left that facility without permission, he had committed the offense of escape from a juvenile facility within the meaning of Section 39.061, Florida Statutes (Supp. 1990). The fact that HRS had designated it a level VI facility would not render the statute under which Petitioner was charged constitutionally infirm.

Even assuming that Section 39.061 is held to be unconstitutional, that would revive the former juvenile escape statute, Section 39.112, Florida Statutes (1989), and Petitioner's conviction and sentence could be affirmed under that statutory provision.

ARGUMENT -- RESTATED

THE DISTRICT COURT OF APPEAL CORRECTLY AFFIRMED PETITIONER'S CONVICTION AND SENTENCE FOR ESCAPE FROM A JUVENILE FACILITY BASED UPON ITS EARLIER DECISION IN B.H. V. STATE, 622 SO. 2D 615 (FLA. 5TH DCA 1993), DECISION ON REVIEW PENDING, FSC CASE NO. 82,361.

On September 16, 1992, Petitioner escaped from Volusia House, a juvenile detention facility of restrictiveness level VI. He had been detained there for the offense of burglary committed when he was under age eighteen. Petitioner was eighteen years of age at the time of the escape and he was charged by Information with a third degree felony, escape from a juvenile facility contrary to Sections 944.40 and 39.061, Florida Statutes (1991). (Appendix I -- Information).

Petitioner's contention is that the portion of Section 39.061 referring to escape from a "residential commitment facility of restrictiveness level VI or higher" is unconstitutional because HRS was improperly delegated the legislative authority to define what constitutes the offense of escape from a juvenile facility by its determination of the restrictiveness level designation of each facility. See Section 39.01(61), Florida Statutes (1991). Petitioner asserts, based primarily on the holding of the First District Court of Appeal in D.P. v. State, 597 So. 2d 952 (Fla. 1st DCA 1992), that the legislature unlawfully delegated its authority to define the offense of escape from a juvenile facility to HRS. He feels that the legislature should have defined the offense of escape from a

juvenile facility by assigning to each residential juvenile commitment facility in Florida a restrictiveness level designation instead of allowing HRS to make that determination. He argues that when HRS determined that Volusia House is a restrictiveness level VI institution on a scale of one to eight and thereby brought it within the purview of Section 39.061, that was somehow an unlawful delegation of legislative authority to an administrative agency. The Second and Fourth District Courts of Appeal followed and adopted the reasoning of the First District in D.P., Supra. State v. Brower, 608 So. 2d 536 (Fla. 2d DCA 1992) and State v. Davis, 619 So. 2d 517 (Fla. 4th DCA 1993). The statute was held constitutional by the Fifth District Court of Appeal in B.H. v. State, 622 So. 2d 615 (Fla. 5th DCA 1993), review granted 632 So. 2d 1025 (Fla. 1994).

The legislature has since addressed these concerns and Sections 39.061 and 39.01(61) were amended in Chapter 92-287, Sections 13 and 14, Laws of Florida, effective October 1, 1992. The issues now before this Court are whether Section 39.061, Florida Statutes (Supp. 1990) was in fact unconstitutional and, if so, what effect that infirmity had on those, like Petitioner, who were charged with escaping from a juvenile facility between the effective date of Section 39.061, Florida Statutes (Supp. 1990) on October 1, 1990 and the effective date its amendment, Section 39.061, Florida Statutes (Supp. 1992) on October 1, 1992.

Respondent maintains initially that the legislature properly delegated to HRS the authority to assign the restrictiveness levels to each of its juvenile detention facilities. In Clark v.

State, 395 So. 2d 525, 528 (Fla. 1981), this Court held that delegation of authority should be viewed reasonably and realistically. Petitioner would have had the legislature rate each of the juvenile detention facilities in Florida and make a determination as to which of those facilities its escape statute should apply. Such a proposal is unrealistic and unreasonable. The legislature properly delegated to HRS the task of classifying its juvenile facilities according to the standards set forth in the statute. Because the legislature limited its definition of the offense of escape from a juvenile facility to only those institutions having a restrictiveness level of VI or higher on a scale of one to eight does not mean that HRS was being delegated the authority to define that offense. The legislature defined the offense and properly delegated to HRS the authority to determine which of its juvenile detention facilities would be rated at restrictiveness level VI or higher. In its opinion in B.H., the Fifth District Court of Appeal held that, after October 1, 1990, the trial court judge decided to which restrictiveness level facility the juvenile offender would be committed. Section 39.052(3)(e)3, Florida Statutes (Supp. 1990). That determination by a judge that the juvenile offender should be placed in a level VI or higher facility imposed upon the juvenile the risk of prosecution for escaping that confinement. By sentencing the juvenile offender to commitment at restrictiveness level VI or higher, the trial court had given that offender adequate notice that an escape from that facility would constitute a third degree felony under Section 39.061, Florida Statutes (1991). The fact

that HRS rather than the legislature classified Volusia House as a level VI facility is inconsequential. The legislature made it a third degree felony to escape from any level VI facility. The trial court committed Petitioner to Volusia House, a level VI facility. When Petitioner left that facility without authorization, he committed the crime of escape from a juvenile facility under Section 39.061, Florida Statutes (Supp. 1990).

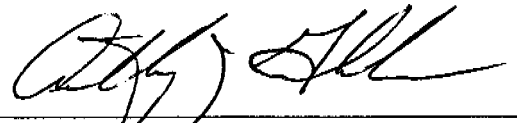
Petitioner also argues that a holding that Section 39.061 is unconstitutional should not revive the former juvenile escape statute, Section 39.112, Florida Statutes (1989). As the Fifth District noted in B.H., "When a statute is declared unconstitutional, the statute it attempted to repeal is still in force." See Messer v. Jackson, 126 Fla. 678, 171 So. 660 (1936). "If the replacement provision falls, the repealer must go with it." Even if Section 39.061 is invalid in toto, Petitioner's conviction for escape from a juvenile facility can still be affirmed based upon the revival of Section 39.112.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent would suggest that this Court should approve the opinion of the District Court of Appeal affirming the Petitioner's adjudication and sentence for escape per curiam.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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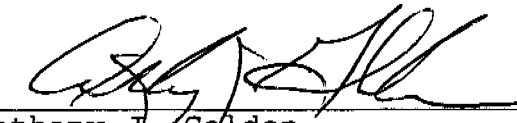
COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Brief on the Merits has been delivered to Anne Moorman Reeves, Esquire, Office of the Public Defender, Counsel for Petitioner, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 15th day of August, 1994.



Anthony J. Golden
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

RONALD L. PETIT,

Petitioner,

v. CASE NO. 83,698

STATE OF FLORIDA,

Respondent.

_____/

APPENDIX

ROBERT A. BUTTERWORTH
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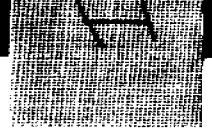

CL FICATION: FELONY

IN T CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY,
STATE OF FLORIDA, IN THE
YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND NINETY TWO

STATE OF FLORIDA

VS.

RONALD LOREN PETIT
W/M DOB: 02-10-74 SS# 044-62-9858

CASE NO. 92-34013CFAES

INFORMATION

JOHN TANNER, State Attorney for the Seventh Judicial Circuit of the State of Florida and as such prosecuting attorney for this Court, in the name of and by the authority of the State of Florida brings this prosecution and makes the following charge or charges in ONE (1) count:

CHARGE: ESCAPE FROM A JUVENILE FACILITY, in Violation of F.S. 944.40 & 39.061, a Third Degree Felony

SPECIFICATIONS OF CHARGE: In that RONALD LOREN PETIT, on or about the 16th day of September, 1992, at or near Daytona Beach within Volusia County, Florida, did, while a prisoner confined in the Volusia House, a level VI residential commitment facility, then and there escape or attempt to escape from such lawful confinement.

FILED
SEP 21 '92
CLERK OF CIRCUIT & COUNTY COURTS
VOLUSIA COUNTY, FLORIDA

FOR THE STATE ATTORNEY

Rosemary L. Calhoun

ASSISTANT STATE ATTORNEY FOR
THE SEVENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA

COUNTY OF VOLUSIA)

STATE OF FLORIDA)

Personally appeared before me ROSEMARY L. CALHOUN, Assistant State Attorney, for the Seventh Judicial Circuit of the State of Florida, known to me to be the foregoing prosecuting officer, who being duly sworn, says that the allegations set forth in the foregoing information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged. Subscribed in good faith. Said facts based on testimony of material witnesses.

SWORN to and subscribed before me this 24 day of SEPTEMBER, A.D. 1992.

Lisa K. Hill

NOTARY PUBLIC AT LARGE
STATE OF FLORIDA (SEAL)

Submitted to the Clerk of the Circuit Court
Seventh Judicial Circuit, in and for
Volusia County, Florida, on the

24 day of September, 1992.

LISA K. HILL

(PRINT NAME)
MY COMMISSION EXPIRES:

cms9-23b35

Notary Public, State of Florida
My Commission Expires Nov. 19, 1995
Bonded Thru Troy Fain - Insurance Inc.

AB 10/7/93 ✓

C CJ

93-207

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 1994

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

RONALD PETIT,

Appellant,

v. CASE NO. 93-247

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed April 8, 1994

Appeal from the Circuit Court
for Volusia County,
Gayle S. Graziano, Judge.

James B. Gibson, Public Defender, and
Anne Moorman Reeves, Assistant Public Defender,
Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Anthony J. Golden,
Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED.

See B.H. v. State, 622 So. 2d 615 (Fla. 5th DCA 1993).

HARRIS, C. J., COBB and GOSHORN, JJ., concur.

634 So. 2d 324 (Fla. 5th DCA 1994).