

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

JUN 24 1996

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner,

v.

DANIEL MAXWELL,

Respondent.

CASE NO. 87,290

PETITIONER'S REPLY BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JAMES W. ROGERS
TALLAHASSEE BUREAU CHIEF
CRIMINAL APPEALS
FLORIDA BAR NO. 0325791

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR PETITIONER

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547 So. 2d 613 (Fla. 1989) 3,4

FLORIDA STATUTES

§ 775.021 2,3

PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Maxwell, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The symbol "R" will refer to the record on appeal, and the symbol "T" will refer to the transcript of the trial court's proceedings; "AB" will designate the Answer Brief of Respondent. Each symbol will be followed by the appropriate page number in parentheses.

All emphasis through bold lettering is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The state relies on the statement in its initial brief which has been accepted by respondent.

SUMMARY OF ARGUMENT

ISSUE: WHETHER RESPONDENT'S THREE CONVICTIONS AND SENTENCES ARISING OUT OF HIS POSSESSION OF ONE FIREARM VIOLATED DOUBLE JEOPARDY?

It is uncontroverted that the three offenses for which respondent was convicted all contain unique statutory elements. Thus, pursuant to section 775.021, Florida Statutes, respondent is guilty of all three offenses and must be separately punished. Respondent's argument turns the statute on its head. Instead of searching for unique statutory elements in each offense, pursuant to statute, respondent urges the Court to search for any common statutory element and then hold that the presence of a common statutory element prohibits multiple conviction and punishment. This is contrary to the plain language of the statute and should be rejected.

ARGUMENT

ISSUE

WHETHER RESPONDENT'S THREE CONVICTIONS AND SENTENCES ARISING OUT OF HIS POSSESSION OF ONE FIREARM VIOLATED DOUBLE JEOPARDY?

The state's initial brief showed that the offenses all contain unique elements and that the plain language of section 775.021, Florida Statutes mandates that each of these three separate offenses be subject to separate conviction and punishment. Respondent's answer brief does not challenge that conclusion. This Court's definitive case law supports the proposition that the plain language of the statute must be strictly applied without judicial gloss and that the legislature unequivocally intends that separate offenses, as determined by statutory analysis, be separately punished. See, State v. Smith, 547 So. 2d 613, 616 (Fla. 1989):

(2) The legislature does not intend that (renumbered) subsection 775.021(4)(a) be treated merely as an "aid" in determining whether the legislature intended multiple punishment. Subsection 775.021(4)(b) is the specific, clear, and precise statement of legislative intent referred to in Carawan as the controlling polestar. Absent a statutory degree crime or a contrary clear and specific statement of legislative intent in the particular criminal offense statutes, [footnote 5. As we pointed out in Carawan, criminal offense statutes rarely contain a specific statement of whether the legislature does or does not intend separate punishment for the offense(s). Theoretically,

there is nothing to preclude the legislature from inserting a specific statement in a criminal offense statute that it does or does not intend separate punishment for the offense created therein.] All criminal offenses containing unique statutory elements shall be separately punished.

(3) Section 775.021(4)(a) should be strictly applied without judicial gloss.

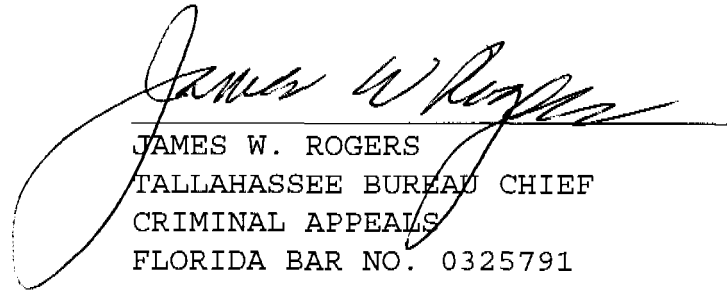
Respondent concludes that the statutory elements must be analyzed to determine if there is a common core element in all statutory offenses and, if so, that the legislature intended only a single conviction and punishment regardless of whether each criminal offense contains a unique statutory element. The state suggests that it would not be possible to concoct an analytical approach which does more violence to the plain language of the statute and to this Court's decision in State v. Smith than does the respondent's core element analysis. Similarly, the district court below grounded its decision on the single act, single episode rationale which has been so emphatically rejected by both the Florida Legislature and this Court. It would not be possible to devise a more egregious violation of the separation of powers doctrine than the adoption of respondent's argument and the district court decision below. Accordingly, the state urges the Court to reject these positions and to reiterate the definitive statement of the law in State v. Smith which so clearly tracks the plain language and intent of the legislature.

CONCLUSION

The decision of the district court should be reversed and the trial court judgment's restored.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

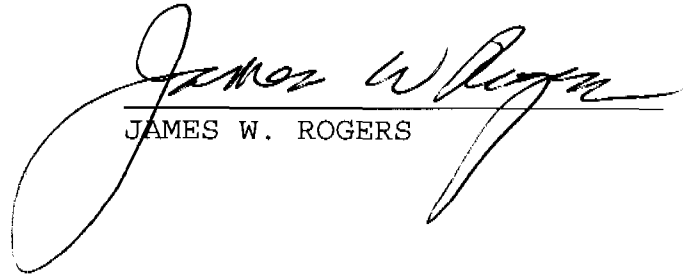

JAMES W. ROGERS
TALLAHASSEE BUREAU CHIEF
CRIMINAL APPEALS
FLORIDA BAR NO. 0325791

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR PETITIONER
[AGO# 96-110311TCR]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S REPLY BRIEF ON THE MERITS has been furnished by U.S. Mail to Kathleen Stover, Assistant Public Defender, Leon County Courthouse, 301 South Monroe Street, Suite 401, Tallahassee, Florida 32301, this 24th day of June, 1996.


JAMES W. ROGERS

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