IN THE SUPREME COURT OF FLORIDA

GLEN R. DEASON,
Petitioner,

-vs-

STATE OF FLORIDA,
DEPARTMENT OF CORRECTIONS
and FLORIDA PAROLE COMMISSION,
Respondents.
_____/

CASE NO. 90,218
DCA NO. 96-458

# PETITIONER'S INITIAL BRIEF

On Appeal From The First District Court
Certified Question Of Great Public Importance

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## PRELIMINARY STATEMENT

In this brief, the appellant, Glen R. Deason, will be refered to as petitioner or Mr. Deason as reteric so dictates.

Citations to the record will be to specifice documents or exhibits and the record will be cited as (R, __).

## STATEMENT OF THE CASE AND FACTS

Glen Deason filed a Writ of Mandamus or alternately a Writ of Habeas Corpus with the circuit court of the Second Judicial Circuit in Leon County on November 17, 1995 (R 1-14).

The circuit court issued an order denying the petitioner's pleadings on January 18, 1996.

The petitioner filed a notice of appeal on January 30, 1996 and the First District filed an opinion on February 28, 1997 in which the Honorable Michael E. Allen filed a dissenting opinion. The court certified the question as to whether Florida Statute 947.1405 is applicable to a defendant who has been sentenced as a habitual offender but has not been convicted of a crime numerated in Fla. R. Crim. P. 3.701 category I, II, III, TV.

The petitioner filed a notice to invoke discretionary jurisdiction with the First District Court of Appeal on March 31, 1997.

The notice was filed pursuant to Haag v. State, 591 So.2d 614 (Fla. 1992).

## SUMMARY OF THE ARGUMENT

The petitioner does not qualify under Fla. Statute 947.1405 (2) because he has never committed an offense under any of the categories listed in Fla. R. Crim. P. 3.701. In order for this Statute to apply, Mr. Deason would need a conviction as a habitual felon and a conviction numerated in one of the four catagories listed in the above rule.

When the legislature inacted Fla. stat. 947.1405(2), they specifically used the word "and" preceded by a comma; this language is specific, and the doctrine of strict construction mandates a literal interpretation. With any ambiguity to be decided in Mr. Deason's favor.

## POINT ONE

### THE DISTRICT COURT INCORRECTLY INTERPRETED SECTION 947.1405(2) AS TO WHETHER PETITIONER IS ELIGIBLE FOR SUPERVISION FOR THE REMAINING PORTION OF HIS SENTENCE DUE TO RELEASE UNDER PROVISIONAL OR TENTATIVE RELEASE DATE

In a long line of cases this Court has explained that the legislature is presumed to express its intent through the plain language in their Statute. In Pedersen v. Green, 105 So.2d 1 (Fla. 1958), the court held explicitly that the words of common usage should be used in "their plain and ordinary sense." Id at 4. The plain language used in Section 947.1405(2), Florida Statutes

(1989) establishes that the legislature intended that inmates who have been convicted of a category I, II, III, IV offense, and either have been subject to habitual sentence or a prior felony committment fall within the Statute. The legislature used "and" to show that both provisions must be met, and the language is neither ambiguous nor unclear. This Court held tha.t where a penal Statute "is clear, plain and without ambiguity, effect must be given to" the Statute accordingly. **Graham v. State, 472** So.2d 464 (Fla. 1985). The legislature must know the meaning of the words they use, and legislative intent should be determined by the language used in the Statute. Thayer V. State, 335 So.2d 815 (Fla. **1976). Aetna Casualty and Surety Company v. Huntington** Nat. Bank, 609 So.2d 1315 (Fla. 1992). The Florida Supreme Court has held that rules of construction speculating on the meaning of a Statute are not to be applied when the plain language is clear. The court interpreted the meaning of the words "either" and "or" in their disjuctive context just as the First District should have looked to the conjunctive meaning of "and" in its context with Florida Statute 947.1405(2). **Zuckerman v. Alteo,** 615 So.2d 661 (Fla. 1993).

The legislature is presumed to have intended some change or alteration in its revision of Section 947.1405(2) Florida Statute 1995. **Town of Lake Park v. Karl,** 642 So.2d 823, 825, (Fla. App. 1st Dist 1994).

The legislature added new language incorporating Section C which includes persons categorized as a sexual predator into the terms of the statute. The Statute now reads that a habitual

1. Ch. 95-264, Section 5, Laws of Florida

felon, an offense category 1, 2, 3, 4, of Rule 3.701, or a Sexual predator fall under provisions of the new law.

The addition of the Sexual predator category shows that the legislature changed the Statute in response to the publics outcry against crime. This presumption is particularly apparent because the legislature did not change the 1993 revision of Section 947.1405 when the opportunity arose to do so.

The majority argues that additional support may be found in the 1993 amendment to Section 775.084(4)(3). This amendment only clarifies the petitioner's position in that the amendment states "[t]he provisions of 947.1405 shall apply to persons sentenced as habitual offenders." The legislature's use of the worked "provisions" in the plural indicates that both a conviction under the four enumerated categories and a conviction as a habitual offender are required under this Statute. The position that this section clarifies legislative intent that the single criteria as a habitual offender meets the requirements of this Statute seems quite strained; the only thing certain is that habitualization is one of the requirements.

The Florida Supreme Court has held that Statutes which appear to be ambiguous must be decided in the defendant's favor. Lamont v. State, 610 So.2d 435 (Fla. 1992). The Lamont court relied on prior holdings establishing that the "fundamental principles of Florida Law is that penal Statutes must be strictly construed according to their letter." Perkins v. State, 576 So.2d 1310 (Fla. 1.991). Tn Perkins this court explained the importance of definiteness and concluded that our Constitution's Separation of Powers

Art II Section 3, prevents our courts from becomming Super Legislatures. The doctrine of Strict Construction mandated that the clear language be followed.

The doctrine of Strict Construction applies to the Statute now in question because the Statute is penal in nature and deprives a person of a protected liberty interest. Even where a Statute imposes a civil penalty, the Statute must be construed by strict construtionin the favor of the defendant. First Fed. Sav. and Loan v. Dept. of Bus. Reg., 472 So.2d 494 (Fla. 5th Dist 1985). There is no doubt that Fla. Statute 944.1405 (1989) should be construed narrowly so "to insure that no individual is not convicted [or looses his liberty] unless 'a fair warning has first been given' to the word in the language that the common world will understand." Mourning v. Family Publications Service, Inc., 411 U.S. 356, 371 93 S.Ct. 1652, 1662, 36 L.Ed.2d 318, , (1973).

The First District's decision is incorrect because the court went outside the Statute and applied aids of construction interpreting legislative intent. The Statute in question was clearly written and the intent of the legislature was obvious and apparent. The court should have given effect to every word in the Statute and should not have attempted summersaults with Statutory Construction. Kirby Center v. Dept. of Labor and Empl. Sec., 650 So.2d 1060 (Fla. App. 1st Dist. 1995). The First District Court of Appeals looked specifically to the Senate Staff Analysis[2] for a proper reading, but failed to realize that the

2. CS/HB 1574, 1422, 1430, 1438, 1439, and 1567

staff analysis did not relate to the consolidated bill that was finally passed as Chapter 88-122 inacting Section 947.1405, The staff analysis related to the first engrossed version of the consolidated bill as passed by the house on May 12, 1988. THe Senate took up the [3] first engrossed bill on June 3, 1988 and amended the bill by striking everything after the enacting clause and inserted an entirely new bill.

There is one very important difference between Section 16 of the first engrossed version of the consolidated bill and shows "but one reasonable purpose for the decision to so alter the punctuation..." the purpose could only have been to dissuade readers of the Statutory text from the very construction now adopted by the majority. (Allen dissenting, page 8).

## CONCLUSION

The purpose and intent of the 1988 legislature was apparent form the language used and the common world could only believe that it required both a conviction under the 4 categories and a sentence as a habitual offender. The language is specific and any ambiguity should be decided in Mr. Deason's favor. Our courts are not super legislatures and changing what the legislature meant through legislative theatrics violates the seperation of powers that we depend on to keep our nation free. We ask this Court to read the Statute and interpret its language as the common world would read it.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have sent by U.S. Mail a true copy

3. Petitioner has adopted portions of the language in the dissenting opinion.

of the foregoing to Bradley R. Bischoff and William C. Camper at 2601 Blair Stone Road, Bldg. C. Room 219, Tallahassee, Florida 32399-12450 this 25 day of April, 1997.

Glen R. Deason

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