

IN THE SUPREME COURT OF FLORIDA

FILED
DEBBIE CAUSSEAU

JUL 20 1999

CLERK, SUPREME COURT
By 

STATE OF FLORIDA,)

Respondent,)

vs.)

JAKE MURRAY, JR.,)

Petitioner.)
_____)

CASE NO. *96,048*

ORIGINAL

**ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL**

PETITIONER'S AMENDED JURISDICTIONAL BRIEF

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

DEE BALL
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TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	3
ARGUMENT	
<u>POINT I:</u> THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL.	4
CONCLUSION	6
CERTIFICATE OF SERVICE	7
CERTIFICATE OF FONT	7

TABLE OF CITATIONS

PAGE NO.

CASES CITED:

Coleman v. State

24 Fla. L. Weekly D1324 (Fla. 2d DCA June 4, 1999) 4

McKnight v. State

727 So.2d 314 (Fla. 3d DCA 1999) 4

Speed v. State

24 Fla. L. Weekly D 1017 (Fla. 5th DCA April 23, 1999), rev. pending
Case No. 95,706 4

State v. Cotton

728 So.2d 251 (Fla. 2d DCA 1998) 4

State v. Wise

24 Fla. L. Weekly D657 (Fla. 4th DCA Mar. 10, 1999) 4

Woods v. State

24 Fla. L. Weekly D831 (Fla. 1st DCA Mar. 26, 1999) 4

OTHER AUTHORITIES CITED:

Section 775.082(8), Florida Statutes. 4

Article V, Section (3)(b)(3), The Florida Constitution 4

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Respondent,)
)
vs.)
)
)
JAKE MURRAY, JR.,)
)
)
 Petitioner.)

)

CASE NO.

STATEMENT OF CASE AND FACTS

The State charged Jake Murray (petitioner) with burglary of a structure with an assault or battery (Count I) and aggravated assault with a blunt instrument (Count II). R. 46, vol. 4. The State filed pretrial notices of intent to seek an enhanced sentence under the habitual offender statute, the violent career criminal statute, and the prison release reoffender statute. R. 52, 55, 56, vol. 4. Petitioner subsequently pled nolo contendere to Count II in exchange for a nolle pross of Count I. No sentencing agreement was presented to the trial court. R. 63, vol. 4, TR. 22, vol. 2.

Petitioner filed a post-plea motion to declare section 775.083(8) unconstitutional. At the hearing on the motion petitioner argued that (1)

application of the statute violates the ex post facto, due process, double jeopardy, and equal protection provisions of the state and federal constitutions, (2) the statute violates the separation of powers doctrine, and (3) application of the statute results in cruel and unusual punishment. R. 70, vol. 4, TR. 3-7, vol. 1. The trial court found that the statute deprives the court of all discretion in sentencing in violation of the separation of powers doctrine and granted the motion. R. 77, vol. 4.

Petitioner scored 87 total sentencing points for a recommended sentence of 59 months and a discretionary range of 44.2 to 73.7 months. R. 84, vol. 4. The trial court found that petitioner qualified as a violent career criminal, but that a VCC sentence was not necessary for the protection of the public. TR. 39, vol. 3. The trial court sentenced appellee to incarceration for five years. R. 81, vol. 4, TR. 39, vol. 3. The State timely appealed. R. 902, vol. 4.

The Fifth District Court of Appeal reversed the trial court on May 28, 1999 citing Speed v. State, 24 Fla. L. Weekly D1017 (Fla. 5th DCA Apr. 23, 1999). The court denied petitioner's motion for certification on June 23, 1999. Petitioner timely filed a notice to invoke this court's jurisdiction. See appendix to this brief.

SUMMARY OF ARGUMENT

Petitioner invokes the jurisdiction of the Supreme Court of Florida pursuant to Article V, Section (3)(b)(3) of the Florida Constitution or based upon conflict among the district courts of appeal.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL.

The trial court found that section 775.082(8), Florida Statutes, deprives the court of all discretion in sentencing in violation of the separation of powers doctrine. The district court reversed citing Speed v. State, 24 Fla. L. Weekly D1017 (Fla. 5th DCA April 23, 1999), rev. pending, Case No. 95,706.¹ The opinion in Speed cites with approval the decision in McKnight v. State, 727 So.2d 314 (Fla. 3d DCA 1999), rev. pending, Case No. 95,154 and disagreement with the decision in State v. Cotton, 728 So.2d 251 (Fla. 2d DCA 1998). As noted by the Second District, the First District has recognized apparent conflict with Cotton (Woods v. State, 24 Fla. L. Weekly D831 (Fla. 1st DCA Mar. 26, 1999) and the Fourth District has certified conflict with McKnight (State v. Wise, 24 Fla. L. Weekly D657 (Fla. 4th DCA Mar. 10, 1999). See Coleman v. State, 24 Fla. L. Weekly D1324 (Fla. 2d DCA June 4, 1999). This court may exercise jurisdiction to review the decision of the district court under

¹In its jurisdictional brief in Speed, the State acknowledges that this court has jurisdiction pursuant to Article V, Section (3)(b)(3) of the Florida Constitution where the decision of the district court expressly declared valid a state statute.


Article V, Section (3)(b)(3) of the Florida Constitution or based upon conflict among the districts.

CONCLUSION

Based upon the authorities cited and the argument presented, petitioner is entitled to discretionary review of the decision of the Fifth District Court of Appeal.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, FL 32118 via his basket at the Fifth District Court of Appeal and mailed to Mr. Jake Murray, #812139, Central Florida Reception Center-Main, P.O. Box 628050, Orlando, FL 32862-8050, this 19th day of July, 1999.



DEE BALL
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is point proportionally spaced CG Times, 14 pt.



DEE BALL
ASSISTANT PUBLIC DEFENDER

IN THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT
STATE OF FLORIDA

STATE OF FLORIDA,)
)
Appellant/Respondent,)
) DCA Case No. 98-3072
vs.)
) Supreme Court Case No.
JAKE MURRAY, JR.)
)
Appellee/Petitioner.)
_____)

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

NOTICE IS GIVEN, pursuant to Fla. R. App. P. 9.120(c), that Petitioner invokes the discretionary jurisdiction of the Supreme Court of Florida to review the decision of the Fifth District Court of Appeal in the above styled cause, dated May 28, 1999. Jurisdiction of the Florida Supreme Court is invoked pursuant to Article V, Section 3(b)(3), of the Florida Constitution and based upon conflict among the district courts of appeal. The opinion of this court reversing the sentence cites Speed v. State, 24 Fla. L. Weekly D1017 (Fla. 5th DCA April 23, 1999), rev. pending, Case No. 95, 706, as controlling authority. The opinion in Speed cites with approval the decision in McKnight v. State, 727 So.2d 314 (Fla. 3d DCA 1999), rev. pending, Case No. 95,154 and disagreement with the decision in State v. Cotton, 728 So.2d 251 (Fla. 2d DCA 1998). See also, Woods v. State, 24 Fla. L. Weekly D831 (Fla. 1st DCA March 26, 1999); State v. Wise, 24 Fla. L. Weekly D657 (Fla. 4th DCA March 10, 1999). The Third District has certified conflict between McKnight v. State, 727 So.2d 314 (Fla. 3rd DCA 1999), rev. pending, Case No. 95,154 and State v. Cotton, 24 Fla. L. Weekly D18 (Fla. 2d DCA December 18, 1998).

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand-delivered to: The Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, FL 32118, via his basket at the Fifth District Court of Appeal and mailed to: Mr. Jake Murray, Jr., DC#812139, Central Florida Reception Center, P.O. Box 628050, Orlando, FL 32862-8050 this ¹³7th day of July, 1999.



DEE BALL
ASSISTANT PUBLIC DEFENDER

98-1076
DB

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

RECEIVED

STATE OF FLORIDA,
Appellant,

v.

CASE NO. 98-3072 JUN 23 1999

JAKE MURRAY, JR.,
Appellee.

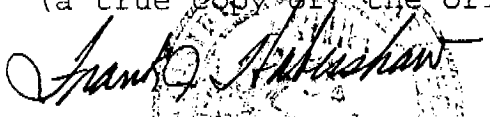
JUN 23 1999

DATE: June 23, 1999

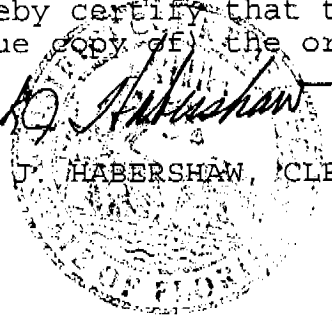
BY ORDER OF THE COURT:

ORDERED that Appellee's MOTION FOR CERTIFICATION, filed
June 2, 1999, is denied.

I hereby certify that the foregoing is
(a true copy of) the original Court order.



FRANK J. HABERSHAW, CLERK



cc: Office of the Public Defender, 7th JC
Office of the Attorney General, Daytona Beach
Jake Murray, Jr.

98-076
DB

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT
JANUARY TERM 1999

STATE OF FLORIDA,
Appellant,

v.

JAKE MURRAY, JR.,
Appellee.

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

Case No. 98-3072

RECEIVED

MAY 28 1999

PUBLIC DEFENDER'S OFFICE
7th CIR. APP. DIV.

Opinion filed May 28, 1999

Appeal from the Circuit Court
for Orange County,
Reginald K. Whitehead, Judge.

Robert A. Butterworth, Attorney General,
Tallahassee, and Kristen L. Davenport, Assistant
Attorney General, Daytona Beach, for Appellant.

James B. Gibson, Public Defender, and Dee Ball,
Assistant Public Defender, Daytona Beach, for
Appellee.

COBB, J.

The trial court declared the Prison Releasee Reoffender Act¹ unconstitutional and
the state appeals. We reverse for the reasons set forth in Speed v. State, 24 Fla. L.
Weekly D1017 (Fla. 5th DCA April 23, 1999).

REVERSED.

GRIFFIN, CJ. and GOSHORN, J., concur.

¹See Ch. 97-239, Laws of Fla. (effective May 30, 1997).