

IN THE SUPREME COURT OF FLORIDA

ROBERT L. STURGIS,)	
)	
Petitioner,)	
)	
vs.)	5 th DCA Case No. 98-1291
)	
STATE OF FLORIDA,)	Supreme Court Case No. 96,210
)	
Respondent.)	
_____)	

PETITIONER’S BRIEF ON THE MERIT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

M. A. LUCAS
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0658286
112 Orange Ave., Ste. A
Daytona Beach, Fl 32114
(904) 252-3367

ATTORNEY FOR PETITIONER

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PRELIMINARY STATEMENT

In this brief, Petitioner, defendant in the trial court, will be referred to by name, while the State of Florida, plaintiff in the trial court, will be referred to as “the State.” The symbol “R” will signify the record on appeal. The symbol “T” shall refer to the trial transcript.

STATEMENT OF THE CASE

An Information was filed on December 11, 1997, charging Petitioner with burglary of an occupied structure, a second degree felony, in violation of Section 810.02(3), Florida Statutes. (R 21) The information alleged that on December 3, 1997, Petitioner entered unlawfully a residence located at 136 Bethune Village, without the consent of the owner, which structure was occupied by a human being at the time. (R 21)

On March 19, 1998, defense counsel filed a ‘Motion to Find the “Prison Releasee Reoffender” Statute, F. S. 775.082(8) (1997) Unconstitutional.’ (R 37-38)

The case proceeded to trial on March 20, 1998, before the Honorable S. James Foxman, Circuit Court Judge of the Seventh Judicial Circuit, in and for Volusia County, Florida. (T 1-95) At the close of the State’s case, defense counsel moved for a judgment of acquittal. (T 50) The trial court denied the motion. (T 50) After deliberations, the jury returned a verdict of guilty as charged in the information. (T 92-93, R 44)

On April 6, 1998, the State filed a “notice of Classifying Defendant as a Prisoner Releasee Reoffender. (R 50-60)

A sentencing hearing was held on May 7, 1998 before Judge Foxman. (R 1-18) Defense counsel objected to sentencing Petitioner pursuant to the Prison Releasee

Reoffender, Florida Statute, Section 775.084, arguing that it was unconstitutional.

Defense counsel also argued that Petitioner never received notice either actual or written regarding the Statute. (R 2-3) Petitioner's sentencing guidelines scoresheet total resulted in a minimum state prison months of 60 and a maximum state prison months of 100. (R 48) The trial court questioned the State Attorney by stating :

“Do you think that offense that he committed justifies a fifteen year sentence?”

Mr. Bonamo: Yes, your honor. He is an individual that has been in the system most of his life, he has been a habitual offender... (R 14)

The State Attorney also stated that the victim did not oppose sentencing Petitioner under the Prisoner Releasee Reoffender Act. (R 14) The trial court stated:

“...I've been thinking about it a lot. I think, technically, from a technical standpoint, the PRR statute is constitutional. I have grave misgivings with it and I do think that it takes away the discretion of the judge completely, and I understand the Lake City judge's frustration with it. I shared such frustration when we first had sentencing guidelines.

But I think the Legislature has the right to do this and I also think that their stated purpose of going after the recidivists, the people that get out of prison and still commit crimes, is a legitimate public purpose and it serves that purpose well. I do have a lot of difficulty with the actual sentence here, because I think it is a little bit of an overkill. I think that the defense attorney is right. I think, frankly, Mr. Sturgis is more of a harm to himself and a threat to himself than he is to the rest of us, and I think that some type of habitualization with a slightly less prison sentence would serve all of us just as well. He's a walking, talking crack addict.

However, I find it is proper and am about to sentence him. Robert, if you want to say anything to me, you can.

The Defendant: Yes, your honor. I need help and -- --

The Court: I can't give it to you, my hands are tied; the Legislature has seen to that. And, like I said, the sentence wouldn't be this but for that statute and I can't blame the public or the legislature for the statute. I understand why they are doing it.

I'd do something a little bit different, but I'm sorry. Your adjudicated guilty. Your sentenced to fifteen years state prison under the PRR statute, which I find constitutional, day for day; credit for the time you've already served..." (R 16-17)(emphasis supplied)

On appeal to the Fifth District Court of Appeal, Petitioner argued that the trial court erred in sentencing Petitioner as a Prison Releasee Reoffender because the statute is unconstitutional. On June 25, 1999, the Fifth District issued its opinion affirming Petitioner's sentence. See Sturgis v. State, 24 Fla. L. Weekly D 1509 (Fla. 5th DCA June 25, 1999) (Appendix). In rejecting Petitioner's argument, the District Court cited to Speed v. State, 732 So. 2d 17 (Fla. 5th DCA 1999), rev. granted, case number 95,706 (Fla. Sept.16, 1999).

A timely notice to invoke this Court's discretionary jurisdiction was filed on July 26, 1999. A Jurisdictional Brief was filed with this Court on August 5, 1999. This appeal follows.

STATEMENT OF THE FACTS

Judy Cason testified that on December 3, 1997, she was living with her 8-year

old daughter in a two-bedroom apartment located at 136 Bethune Village. (T 16-17) At approximately 3:50 a.m., she heard a loud noise which woke her up. (T 18) Ms. Cason got up to investigate and observed a man entering her apartment through her living room window. She called 911. (T 19-20) Ms. Cason identified Petitioner as the individual who entered her apartment. (T 20) Ms. Cason testified that she observed Petitioner enter the kitchen and heard him going through her refrigerator. (T 21) Ms. Cason testified that she was afraid. (T 22) She observed Petitioner exit the kitchen and go into the living room closet. Petitioner removed her daughter's red jacket with a hood. (T 22-23) Ms. Cason testified that she observed Petitioner put the jacket on and walk out the front door. (T 23) She walked into her living room and looked out the front door and observed Petitioner walking down the sidewalk up Rose Street. (T 24)

Officer Diaz testified that he responded to a burglary in progress on December 3, 1997 at 3:58 a.m. (T 43) He testified that he responded within a minute and a half of the call being made. (T 43) Officer Diaz observed the Petitioner walking down Rose Street wearing the red jacket which had been described by the victim. (T 44-45) He also observed Petitioner carrying various grocery items. (T 45-46) Officer Hlavin of the Daytona Beach Police Department also responded to the burglary and observed Petitioner stopped by Officer Diaz on Rose Street which is near Bethune Village. (T

35-37) Officer Hlavin testified that Petitioner was wearing a red jacket and had various grocery items. (T 37-38)

Officer Hlavin transported Ms. Cason to where the Petitioner had been stopped on Rose Street. (T 26, 38) Ms. Cason identified Petitioner as the individual who entered her apartment. She also identified the grocery items as hers and the red jacket that Petitioner was wearing was her daughter's jacket. (T 26, 39, 46-47)

Petitioner testified that on December 3, 1997 he was living at 257 Bethune Village with his sister. (T 53) Petitioner testified that on December 3, 1997 he walked over to his sister's home where he made himself a bologna sandwich. (T 54) Petitioner testified that he was wearing a red jacket but that it was not the jacket identified by the State witnesses. Petitioner testified that he obtained the red jacket from his sister's apartment. (T 54-56, 58-59) Petitioner denied entering anyone else's home in Bethune Village that evening. (T 56-57)

SUMMARY OF ARGUMENT

The "Prison Releasee Reoffender" Act is unconstitutional because it violates the Florida and United States Constitutions' prohibitions against the exercise of one government branch's powers by another; the Constitutions' guarantee of due process; and the constitutional provision that legislative enactments must deal with only one subject.

ARGUMENT

THE TRIAL COURT ERRED BY DENYING PETITIONER'S MOTION TO DECLARE THE "PRISON RELEASEE REOFFENDER" ACT UNCONSTITUTIONAL.

Prior to trial, defense counsel filed a ‘Motion to Find the “Prison Releasee Reoffender” Statute, F. S. 775.082(8) (1997) Unconstitutional.’ (R 37-38) Petitioner was found guilty by the jury of burglary of an occupied structure. (R 44) After trial, the State Attorney's Office filed a “Notice of Classifying Defendant as a Prisoner Releasee Reoffender, pursuant to Section 775.082(8). (R 50-60) After a hearing, the trial court denied Petitioner’s motion and sentenced Petitioner to 15 years in prison as a Prison Releasee Reoffender. (R 17, 63)

Defense counsel argued that the "Prison Releasee Reoffender" Act is violative of the due process, equal protection, excessive-punishment, separation-of-powers, and single-subject legislation provisions of the Florida and United States Constitutions. Art. I Sections 2, 9, and 16, Fla. Const.; Amends. V and XIV, U. S. Const.

Separation of Powers

The "prison releasee reoffender" statute assigns to the State Attorney's Office the task of justifying the imposition upon a "prison releasee reoffender" of a sentence of less than the statutory maximum, and makes mandatory punishment to the "fullest extent of the law" for all who meet the definition of a prison releasee reoffender.

Sections 775.082(8)(d)1. and 775.082(8)(d)2., Fla. Stat. (1997). These provisions violate the separation of powers clauses of Florida's and the United States' Constitutions. Art. II Section 3, Fla. Const.; Arts. I Sections 1, II Section 1, and III Section 1, U. S. Const.

"Under Florida's constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute." State v. Bloom, 497 So. 2d 2 (Fla. 1986). But see Art. V, Section 17, the Judiciary Article of the Constitution which defines the powers and duties of State Attorneys. If a statute purports to give either the judicial or executive branch of government the power to create a crime or its punishment, a power assigned to the legislative branch, then that statute is unconstitutional. B. H. v. State, 645 So. 2d 987 (Fla. 1984). The prohibition against one branch of government's exercising the power of another's "could not be plainer," and the Supreme Court "has stated repeatedly and without exception that Florida's Constitution absolutely requires a 'strict' separation of powers. Id., 645 So.2d at 991. "[T]he power to create crimes and punishments in derogation of the common law adheres solely in the democratic processes of the legislative branch." Perkins v. State, 576 So. 2d 1310, 1312 (Fla. 1991). (Emphasis supplied.)

In addition, just as the "Prison Releasee Reoffender" Act invades the State

Attorney's province and discretion, the Legislature has attempted to transfer to the State Attorney's Office the judicial function of determining the sentence in a criminal case. A prosecutor's notice of intent to "seek" the imposition of the mandatory minimum provisions of Section 775.082(8) constitutes a de facto sentencing of the targeted defendant who qualifies, with no discretion left to the judge to determine whether such a sentence is necessary or appropriate or just. (R 17) Compare Section 775.084(3)(a)6., which requires a trial judge to sentence a defendant pursuant to the enhancement provisions of the habitual offender statute "unless the court finds that such sentence is not necessary for the protection of the public." Thus the Legislature has improperly delegated to State Attorneys the power to decide what the punishment for particular crimes are by choosing to trigger the operation of the "Prison Releasee Reoffender" Act.

Single-Subject Legislation

The "Prison Releasee Reoffender Punishment" Act addresses provisions ranging from whether a youthful offender shall be committed to the custody of the Department of Corrections to when a chronic substance abuser may be placed on probation or into community control, amending Sections 944.705, 947.141, 948.01, and 958.14, as well as Section 775.082. Ch. 97-239, Sections 2-6, Laws of Florida. Article III Section 6 of the Florida Constitution provides:

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

Chapter 97-239 created the "Prison Releasee Reoffender" Act [Section 775.082(8)] and also amended or created Sections 944.705, 947.141, 948.06, and 958.14. These other provisions concern matters ranging from whether a youthful offender shall be committed to the custody of the Department of Corrections to when a court may place a defendant on probation or in community control if the person is a substance abuser to expanding the category of persons authorized to arrest a probationer or person on community control for violation. The only portion of Chapter 97-239 that relates to the same subject matter as sentencing "prison releasee reoffenders" is the provision creating Section 944.705 which requires the Department of Corrections to notify inmates in no less than 18-point type of the consequences of the new "Prison Releasee Reoffender" Act if certain enumerated crimes are committed within three years of his or her release. Ch. 97-239 Section 3, Laws of Florida. The other subjects are not reasonably connected with or related to the "Prison Releasee Reoffender" Act and are thus not part of a single subject.

In Bunnell v. State, 453 So. 2d 808 (Fla. 1984), this Supreme Court held that to be held constitutional a legislative act must both be fairly titled and bear a "cogent relationship" with all the subjects of all its sections. The provisions dealing with probation violations, arrest of probation violators and forfeiting gain time for

violations of controlled release are not reasonably related to the mandatory punishment provisions for particular crimes committed within three years of a person's release from prison. That all the provisions within Chapter 97-239 relate to the general topic of "crime" does not mean that the disparate components are all of the same subject, any more than a single piece of legislation affecting contracts, torts and water quality would be the same "subject" because they are all "civil" topics.

Due Process

The "Prison Releasee Reoffender" Act violates Petitioner's due process rights guaranteed by the Constitutions in that it allows the prosecutor in each case to determine who shall be prosecuted as a "prison releasee reoffender" and thereby determine the sentence that will be imposed, thus usurping Petitioner's right to mitigation and to have an impartial judge determine what sentence is appropriate under the circumstances. Art. I Section 9, Fla. Const.; Amend. XIV, U. S. Const. In other instances where a judge's sentencing discretion is annulled by a mandatory minimum sentencing mandate, there have been provided safeguards such as the requirement that the circumstance triggering the mandatory minimum sentence be charged and proven as an element of the crime. See, e. g., first-degree murder; capital sexual battery; and mandatory minimum sentences for using a firearm. Sections 782.04(1)(a), 794.011(2)(a), 775.087, and 775.082(1), Fla. Stat. (1997). See also

State v. Tripp, 642 So.2d 728 (Fla.1994) (error to reclassify felony and enhance sentence based on defendant's use of a weapon absent special verdict form reflecting jury's separate finding that defendant used weapon during commission of felony; a finding that defendant is guilty as charged is insufficient to constitute a finding that he used a weapon even though the information alleged use of a weapon during the commission of the offense).

Judge Blackstone told the jury in this case:

THE COURT: Your duty is to determine if the defendant has been proven guilty or not in accord with the law. It's the Judge's job to determine a proper sentence if the Defendant is found guilty.
(T 87) (Emphasis supplied.)

The fact that the prosecutor could and had decided to pursue his sentencing options under the "Prison Releasee Reoffender" Act rendered this statement fundamentally misleading: if Petitioner were found guilty, Judge Blackstone would have no option at all to impose any sentence of less than 15 years in prison. Section 775.082(8)(a)2.c., Fla. Stat. (1997).

The statute blatantly violates constitutional due process under the 5th and 14th Amendments to the US Constitution and Article I Section 9 of the Florida Constitution by providing a notice requirement in Section 944.705(6)(a), which in subsection (b) it nullifies, by saying that evidence of the DOC failing to provide the notice is no barrier to a person being sentenced as a PRR. In the instant case,

Petitioner maintains that he never received written or actual notice as required by the statute in subsection (a). (R 2-3)

Excessive Punishment

Finally, the imposition of a 15 year sentence upon a person whose maximum incarceration under the guidelines would be 100 months (8.3 years) violates the Excessive Punishment Clauses in Article I Section 17 of the Florida Constitution and the Eighth Amendment to the U.S. Constitution.

The "Prison Releasee Reoffender" Act is unconstitutional.

CONCLUSION

Based upon the foregoing arguments and authorities, Petitioner respectfully requests this Honorable Court to declare Section 775.082(8), Fla. Stat. (1997) unconstitutional and vacate Petitioner's fifteen year sentence.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

M. A. LUCAS
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 0658286
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
(904) 252-3367

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 Blvd., Fifth Floor, Daytona Beach, FL 32118 via his basket at the Fifth District Court of Appeal and mailed to: Mr. Robert L. Sturgis, DC# 587770, Santa Rosa Correctional Institution, 5850 E. Milton Road, Milton, Florida 32853, on this _____ day of December, 1999.

M. A. LUCAS
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in the brief is 14 point proportionally spaced Times New Roman.

M. A. LUCAS
ASSISTANT PUBLIC DEFENDER

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APPENDIX

Sturgis v. State
24 Fla. L. Weekly D1509 (Fla. 5th DCA June 25, 1999)