IN THE SUPREME COURT OF FLORIDA

ROBERT STURGIS,

Petitioner,

v.

CASE NO. SC96,210

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON THE MERITS

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CERTIFICATE OF FONT AND TYPE SIZE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

SUMMARY OF ARGUMENT

The Prison Releasee Reoffender Act was enacted in full compliance with the single subject rule, and its provisions are constitutional. The Act does not violate the separation of powers doctrine or due process. Setting mandatory sentences is a proper matter for the legislature, and enforcing such a statute is a proper matter for the executive.

Contrary to Sturgis' argument, the statutory scheme does not make the prosecutor a judge. The trial court still fulfills its proper role -- deciding whether the defendant is eligible for this sentencing enhancement and imposing the sentence itself.

ARGUMENT

THE PRISON RELEASEE REOFFENDER ACT IS CONSTITUTIONAL.

Concerned about the early release of felony offenders and the resulting impact on Florida's residents and visitors when such offenders continue to prey upon society, the legislature determined that public safety could best be ensured by providing for lengthy mandatory sentences for those who commit new serious felonies upon their release from prison. Accordingly, the Prison Releasee Reoffender Punishment Act was enacted, effective May 30, 1997. Ch. 97-239, Laws of Florida.

Under this statute, an individual who commits certain enumerated violent felonies within three years of being released from prison must be sentenced to the statutory maximum term of imprisonment. § 775.082(8), Fla. Stat. (1997).

Sturgis contends that the Prison Releasee Reoffender Act is unconstitutional, as it violates the separation of powers doctrine. According to Sturgis, the legislature has infringed on the power of the executive, which has the exclusive authority to charge and prosecute.

This claim is without merit. The mere fact that the legislature specifically set out its intent that repeat offenders be punished to the full extent of the law does not infringe on the executive's duty to decide how to prosecute. The prosecutor's

authority to proceed against the defendant as he or she so chooses is not limited in any manner by the Act.

In a related separation of powers argument, Sturgis contends that the legislature has improperly delegated the sentencing power of the judiciary to the executive. In other words, by invoking the mandatory penalties required by the statute, the executive has become the sentencing entity. This claim must also be rejected.

First of all, it is well-established that setting penalties for crimes is a matter of substantive law within the power of the legislature. McKendry v. State, 641 So. 2d 45, 47 (Fla. 1994); Smith v. State, 537 So. 2d 982, 985 (Fla. 1989). Accordingly, arguments that mandatory sentences violate the separation of powers doctrine have been uniformly rejected by this Court. See, e.g., Lightbourne v. State, 438 So. 2d 380, 385 (Fla. 1983), cert. denied, 465 U.S. 1051 (1984); Scott v. State, 369 So. 2d 330, 331 (Fla. 1979); Sowell v. State, 342 So. 2d 969 (Fla. 1977).

Sturgis' argument that the mandatory sentences for repeat offenders infringes on the power of the judiciary should likewise be rejected. The legislature acted well within its authority in setting these mandatory sentences.

The statute also sets forth a procedure whereby the executive initiates the sentence enhancement process. Contrary to Sturgis' argument, this procedure does not mean that the executive has usurped the power of the judiciary, and it does not make the prosecutor a judge, as Sturgis asserts. While the executive

initiates the process, it is the court which decides whether the defendant qualifies under the statute, and it is the court which imposes the sentence itself. Cf. Young v. State, 699 So. 2d 624, 625-27 (Fla. 1997) (state attorney has sole authority to initiate habitual offender proceedings).

Sturgis' due process argument is therefore also without merit -- he was still sentenced by a neutral judge after a full adversarial proceeding, even though a mandatory sentence was involved. Contrary to Sturgis' contention, the trial court is not removed from the sentencing process, and the defendant is not sentenced by the executive. Just as in other statutes providing for mandatory sentences, the trial court impartially decides whether the executive has met its burden of establishing the defendant's eligibility for application of the statute and imposes a sentence accordingly. There is no constitutional right to avoid a mandatory sentence, and the statute does not violate due process.

Sturgis also argues that the sentencing procedure violates due process because there is no requirement of a jury finding of the underlying basis for the mandatory sentence. To the contrary, the statute does in fact require such a finding -- the jury must find the defendant has committed a qualifying felony on a certain date. The trial court then applies this finding to the provisions of the statute -- examining, for example, whether the defendant had been released from prison within three years of the date the jury found the crime had been committed.

Sturgis finally argues that due process was violated because the judge instructed the jury that its role was to determine the defendant's guilt, while determining the proper sentence was the job of the judge. The State submits that this statement is just as accurate in cases where a mandatory sentence is applicable as in cases where the guidelines set out the appropriate sentence. Again, Sturgis is merely complaining that the trial court's discretion is restricted by the mandatory nature of the sentence, and again this is a matter within the legislature's prerogative.

The Prison Releasee Reoffender Act gives the State Attorney no greater power than that traditionally exercised in the charging decision, and it in no way infringes upon the sentencing power of the judiciary -- which still has to evaluate whether the State has proven that the defendant qualifies for sentencing under the statute and still has to impose the sentence itself. McKnight v. State, 727 So. 2d 314 (Fla. 3d DCA), rev. granted, case #95,154 (Fla. Aug. 19, 1999).

This Court should adopt the well-reasoned decision of the district court in McKnight, and Sturgis' separation of powers and due process arguments should be rejected. See also Woods v. State, 24 Fla. L. Wkly. D831 (Fla. 1st DCA March 26) (agreeing with McKnight, rejecting separation of powers challenge to PRR statute), rev. granted, case #95,281 (Fla. Aug. 23, 1999); Speed v. State, 732 So. 2d 17 (Fla. 5th DCA) (same), rev. granted, case # 95,706 (Fla. Sept. 16, 1999).

Sturgis next contends that the statute is unconstitutional because it was enacted in violation of the single subject requirement of article III, section 6 of the Florida Constitution. This section simply requires that there be a logical or natural connection between the various portions of the legislative enactment. State v. Johnson, 616 So. 2d 1, 4 (Fla. 1993). This requirement is satisfied as long as a "reasonable explanation exists as to why the legislature chose to join [the] subjects within the same legislative act." Id.

In making this determination, "wide latitude" must be given to the legislature, and a court should not strike down a statute on this basis absent a "plain violation" of the constitutional requirement. State v. Lee, 356 So. 2d 276, 282 (Fla. 1978). The act may be as broad as the legislature wishes, as long as there is some natural or logical connection between the various provisions. Martinez v. Scanlan, 582 So. 2d 1167, 1172 (Fla. 1991).

Here, a reading of the relevant chapter law shows that there is a natural or logical connection between the various sections. The chapter law creates the statute at issue, dealing with punishment of repeat offenders; provides for a warning of the mandatory sentences as inmates are released; provides for mandatory forfeiture of gain-time upon violation of conditional release and upon revocation of probation/community control; gives law enforcement officers the authority to arrest a probationer without a warrant upon probable cause that the person is in violation of

his probation; and reenacts certain statutes to incorporate the amendments by reference.

Clearly, the entire chapter deals with a single subject -- sanctions for repeat offenders who are still failing to obey the law. The provisions are not connected solely by the fact that they all deal with the general topic of crime, as argued by Sturgis.

This chapter law is similar to other laws where courts have found a reasonable connection between the various provisions -- with the requisite deference to the legislature. See, e.g., Burch v. State, 558 So. 2d 1, 3 (Fla. 1990) (approving Chapter 87-243, where provisions relating to comprehensive criminal regulations, money laundering, and safe neighborhoods were all related to single subject of controlling crime); Smith v. Department of Insurance, 507 So. 2d 1080, 1084-87 (Fla. 1987) (tort reform and contractual insurance reform provisions could be enacted in same legislation).

The Fourth District Court of Appeal recently addressed the same argument Sturgis makes here, concluding that the Act does not violate the single subject rule. Young v. State, 719 So. 2d 1010, 1011-12 (Fla. 4th DCA 1998), rev. denied, 727 So. 2d 915 (Fla. 1999). This Court should follow the well-reasoned decision of the district court in Young, and Sturgis' single subject argument should be rejected.

Sturgis finally argues that his 15 year sentence is an excessive punishment, as the guidelines called for a maximum sentence of only 8.3 years. This argument has no merit. Numerous

offenders are sentenced outside the guidelines under the current statutory sentencing scheme -- habitual offenders, habitual violent offenders, and now prison releasee reoffenders. The legislature has clearly determined that repeat offenders present a grave danger to society and must be punished more severely, and it is certainly within the legislature's prerogative to make such a determination.

Sturgis is, in fact, a good example of exactly the kind of person the legislature is attempting to deter. He has been incarcerated for most of his life, and less than five months after his release from prison he had committed yet another burglary, this time with a single mother and her young child present in the dwelling at the time.

Clearly, there is nothing cruel or unusual about a 15 year sentence for this felony. In fact, Sturgis was actually eligible for an even longer sentence -- had he been sentenced as a habitual offender, he could have received a sentence of *30* years imprisonment. § 775.084(4)(a)(2), Fla. Stat. (1997). Moreover, Sturgis has not even attempted to demonstrate that his sentence is disproportionate to other sentences or other jurisdictions. See Hale v. State, 630 So. 2d 521, 525-26 (Fla. 1993), cert. denied, 115 S.Ct. 278 (1994); Sanchez v. State, 636 So. 2d 187, 189 (Fla. 3d DCA 1994); Long v. State, 558 So. 2d 1091, 1092 (Fla. 5th DCA 1990).

Sturgis' final challenge to the statute should be rejected, and the district court's decision affirming Sturgis' sentence as a prison releasee reoffender should be approved.

CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully requests that this Court approve the decision of the district court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Respondent's Brief has been furnished by hand delivery to M.A. Lucas, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 10th day of January, 2000.

Kristen L. Davenport
Assistant Attorney General

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RESPONDENT'S APPENDIX

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

ROBERT STURGIS,

Appellant,

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

v.

Case No. 98-1291

STATE OF FLORIDA,

Appellee.

Opinion Filed June 25, 1999

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

Appeal from the Circuit Court
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PER CURIAM.

AFFIRMED. See McKnight v. State, 727 So. 2d 314 (Fla. 3d DCA 1999); see also Speed v. State, 24 Fla. L. Weekly D1017 (Fla. 5th DCA April 23, 1999); Woods v. State, 24 Fla. L. Weekly D831 (Fla. 1st DCA March 26, 1999).

SHARP, W., THOMPSON and ANTOON, JJ., concur.