

IN THE SUPREME COURT OF FLORIDA

FREDDIE ALEXANDER,

Petitioner,

v.

CASE NO. 96,397

STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S SUPPLEMENTAL 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

Alexander's sentence is within the statutory maximum for a violent career criminal. His designation as both a violent career criminal and a prison releasee reoffender does not violate double jeopardy, as he still received only one sentence for his crime.

ARGUMENT

ALEXANDER'S SENTENCE DOES NOT  
VIOLATE DOUBLE JEOPARDY.

As a supplemental point on appeal, Alexander contends that his sentence as both a violent career criminal and a prison releasee reoffender violates double jeopardy. Not only was this claim never presented to the trial court, but it was never even presented to the district court of appeal. Accordingly, the State submits that this claim should not be addressed by this Court, as it was not properly preserved below.

Even if this Court chooses to address this claim, it should still be rejected. The only case authority Alexander cites in support of his contention is Adams v. State, 24 Fla. L. Weekly D2394 (Fla. 4th DCA Oct. 20, 1999). In that case, the defendant was given a fifteen year term of imprisonment as a prison releasee reoffender *to be followed by* a fifteen year term of probation as an habitual felony offender for the single offense of burglary of an occupied dwelling. The court held that such a sentence violated double jeopardy.

Here, on the other hand, Alexander was not given two sentences for his crime. He was designated a violent career criminal and sentenced to thirty five years imprisonment, well within the statutory maximum. He was also designated a prison releasee reoffender, with the requisite consequences of such a designation (i.e., he would not be eligible for parole or any form of early

release). However, he was not given an *additional* sentence under this alternative statute, unlike the defendant in Adams. (R. 103-04, 242).

The PRR statute specifically provides that it does not preclude a greater sentence of incarceration pursuant to section 775.084. § 775.082(8)(c), Fla. Stat. (1997). Alexander's thirty five year sentence, with a thirty year minimum mandatory, is well within the limits for a career criminal. § 775.084(4)(c), Fla. Stat.

Alexander's sentence does not exceed "the limits prescribed by the legislative branch of government, in which lies the substantive power to define crimes and prescribe punishments." Jones v. Thomas, 491 U.S. 376, 381 (1989). His double jeopardy claim should be rejected.

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 Supplemental Brief has been furnished by hand delivery to Barbara C. Davis, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this \_\_\_\_\_ day of December, 1999.

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