

IN THE SUPREME COURT OF FLORIDA

JAMES SIMMONS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 96, 465  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

PETITIONER'S REPLY BRIEF ON THE MERITS

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**PRELIMINARY STATEMENT**

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach, Florida, and Appellant in the Fourth District Court of Appeal. Respondent was Appellee, below.

In the brief, the parties will be referred to as they appear before this Honorable Court.

**CERTIFICATION OF TYPE FACE**

Petitioner certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

**STATEMENT OF THE CASE AND FACTS**

Petitioner acknowledges Respondent's acceptance of his Statement of the Case and Fact.

**SUMMARY OF THE ARGUMENT**

Petitioner will rely on the argument summaries he advanced in his Brief on the Merits.

ARGUMENT

POINT I

ISSUE PRESENTED:

AS CONSTRUED IN WOODS V. STATE<sup>1</sup> THE PRISON RELEASEE REOFFENDER ACT, SECTION 777.082(8), FLORIDA STATUTES, DELEGATES JUDICIAL SENTENCING POWER TO THE STATE ATTORNEY, IN VIOLATION OF THE SEPARATION OF POWERS CLAUSE, ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION.

Petitioner will rely on the argument advanced in his Brief on the Merits.

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<sup>1</sup>24 Fla. L. Weekly D831 (Fla. 1<sup>st</sup> DCA March 26, 1999).

**ARGUMENT**

**POINT II**

**THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO FIND THE PRISON RELEASEE REOFFENDER ACT UNCONSTITUTIONAL AS IT VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FEDERAL AND FLORIDA CONSTITUTIONS.**

Respondent's argument, that the Prison Releasee Reoffender law passes the equal protection, relational relationship test, is wrong. It would be correct if either a trial judge or a prosecutor had any discretion as to whether to impose the law's requirements; however, they do not.

The law mandates both a prosecutor to seek and a trial court to impose the statutory maximum sentence upon conviction of any enumerated felony offense. The obligation on the prosecutor is clear. He must seek PRR sanctions whenever an accused meets the statutory criteria. Section 775.082(9)(d)2, Fla. Stat. (1997) require a prosecutor to report to the State Attorneys Association and explain, for public record, the reason why he or she "deviated" and did not seek PRR sanctions against an otherwise qualifying defendant. Such a requirement belies other language in the law that purportedly gives a prosecutor discretion to seek this sort of sentencing enhancement. In reality, the statute mandates the prosecutor to seek PRR sanctions against qualifying defendants and, in turn, mandates trial courts in impose PRR sanctions when

provided with documentation showing a defendant qualifies. The only time a qualifying defendant would not receive PRR sanctions is when the State would fail to provide the documents or when it incorrectly accused a defendant of qualifying. In neither case is there an exercise in discretion, by either the trial court or prosecutor, which would result in a qualifying defendant not receiving PRR sanctions.

Without the actual ability of a trial judge to exercise discretion in the imposition of a PRR sentence and without the practical ability of a prosecutor to utilize discretion in deciding to seek a PRR sanction, the statute fails the rational relationship test, as it applies only to Florida prison releasees, not those from other states or those released from jail sentences. See Williams v. State, 24 Fla. L. Weekly D2712 (Fla. 3d DCA December 8, 1999). Hence, this Court should find the Prison Releasee Reoffender law unconstitutional, as it violates the equal protection clause of both the federal and Florida constitutions.



ARGUMENT

POINT III

THE TRIAL COURT ERRED IN DENYING Petitioner'S  
MOTION TO FIND THE PRISON RELEASEE REOFFENDER  
ACT UNCONSTITUTIONAL BECAUSE IT UNLAWFULLY  
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POINT VI

THE TRIAL COURT ERRED IN DENYING Petitioner'S  
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ACT UNCONSTITUTIONAL AS IT VIOLATES  
Petitioner'S RIGHT TO SUBSTANTIVE DUE PROCESS  
OF LAW.

Petitioner will rely on the argument advanced in his Brief on  
the Merits.

**CONCLUSION**

WHEREFORE, it is respectfully requested that the Court exercise its discretion to review the decision and resolve the issues presented in this case and find the prison release reoffender law unconstitutional and render any and all other relief that is deemed appropriate.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Marrett W. Hanna, Assistant Attorney General, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida 3401-2299 this \_\_\_\_\_ day of December, 1999.

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IAN SELDIN  
Counsel for Respondent