

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :

Petitioner, :

vs. :

Case No. 96,522

CHARLES W. CUMMINGS, :

Respondent. :

_____ :

FILED
DEBBIE CAUSSEAU
OCT 21 1999
CLERK, SUPREME COURT
BY

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF RESPONDENT ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Respondent accepts the statement of case and facts as presented by the Petitioner.

SUMMARY OF THE ARGUMENT

This appeal addresses the ability of the trial court to exercise discretion when sentencing a defendant who qualifies for sentencing under the Prison Releasee Reoffender Act. As this issue is currently pending review by this Court in State v. Cotton, 728 So. 2d 251 (Fla. 2d DCA 1998), review granted, 737 So. 2d 551 (Fla. 1999, Respondent acknowledges that this Court may exercise its jurisdiction to accept review in this case as well.

ARGUMENT

ISSUE I

WHETHER THIS COURT MAY EXERCISE ITS
DISCRETION AND ACCEPT REVIEW OF THE
OPINION ISSUED IN THE INSTANT CASE.

The Respondent acknowledges that the application of the Prison Releasee Reoffender Act has created conflict among district courts. Specific to this case, is the question of whether any judicial discretion in sentencing exists under the Act. This issue is currently awaiting review before this Court in State v. Cotton, Case No. 94,996. In its Per Curiam Affirmed opinion in the present case, the Second District Court of Appeal referred specifically to Cotton. The Court also noted conflict with Mcknight v. State, 727 So. 2d 314 (Fla. 3d DCA 1999), rev. pending, No. 95,154 and Woods v. State, 24 Fla. L. Weekly D8312 (Fla. 1st DCA March 26, 1999), rev. pending, No. 95,281.

For these reasons, Respondent recognizes that this Court may exercise its discretion and accept this case for review.

CONCLUSION

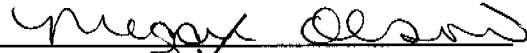
WHEREFORE, this Honorable Court may choose to accept jurisdiction to resolve the conflict that exists in the application of the Prison Releasee Reoffender Act.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Erica M Raffel, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this 19 day of October, 1999. ✓

Respectfully submitted,

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