IN THE SUPREME COURT OF FLORIDA

CASE NO. SC96-713

KEVIN ROLLINSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

****

ON PETITION FOR DISCRETIONARY REVIEW FROM THE
FOURTH DISTRICT COURT OF APPEAL

****

BRIEF OF RESPONDENT ON MERITS

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CASE NO. SC96-713

KEVIN ROLLINSON v. STATE OF FLORIDA

CERTIFICATE OF INTERESTED PERSONS

Counsel for the State of Florida, Appellee herein, certifies that the following additional persons and entities have or may have an interest in the outcome of this case.

1. The Honorable Howard Berman, Circuit Court Judge, Fifthteenth Judicial Circuit

2. The Honorable Robert A. Butterworth, Attorney General

3. Celia A. Terenzio, Assistant Attorney General, Bureau Chief (Counsel for the State of Florida, Respondent)

4. Steven R. Parrish, Assistant Attorney General (Counsel for the State of Florida, Respondent)

5. The Honorable Michael Satz, State Attorney Nineteenth Judicial Circuit

6. The Honorable Richard L. Jorandby, Public Defender Fifthteenth Judicial Circuit (Counsel for Petitioner/Appellant)

7. Joseph R. Chloupek, Assistant Public Defender (Counsel for Petitioner/Appellant)

8. Kevin Rollinson (Petitioner/Appellant/Defendant)

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel for the State of Florida, Appellee herein, hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

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PRELIMINARY STATEMENT

Petitioner was the defendant in the trial court and Appellant before the Fourth District Court of Appeal, and will be referred to herein as “Petitioner” or “Defendant” or “Appellant”. Respondent, the State of Florida, was the prosecution in the trial court and the Appellee on appeal, and will be referred to herein as “Respondent” or the “State”.

The following symbols will also be used:

“R” = Record on Appeal

“T” = Transcript on Appeal

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts for purposes of this appeal subject to the additions and clarifications set forth in the argument portion of this brief, which are necessary to resolve the legal issues presented upon appeal.

SUMMARY OF THE ARGUMENT

This Court should uphold the sentence of the trial court and affirm Rollinson v. State, 743 So.2d 585 (Fla. 4th DCA 1999), as Chapter 97-239, the Prison Releasee Reoffender Punishment Act (PRR), Chapter 97-239, as codified by Florida Statutes, Section 775.082(9)(1997), does not violate the single subject and separation of powers provisions of the Florida constitution.

ARGUMENT

THE PRISON RELEASEE REOFFENDER PUNISHMENT ACT (PRR), CHAPTER 97-239, AS CODIFIED IN FLORIDA STATUTES, §775.082(9)(1997), DOES NOT VIOLATE THE SINGLE SUBJECT AND SEPARATION OF POWERS PROVISIONS OF THE FLORIDA CONSTITUTION.

Petitioner asserts that he was illegally sentenced under PRR, because §775.082(9)(1997), violates the single subject and separation of powers provisions of the Florida constitution. Since PRR meets all constitutional requirements, Petitioner's argument is meritless.

1) **Single Subject Violation**

Chapter 97-239 is an attempt by the Legislature to impose stricter punishment on reoffenders to protect society, as reflected in the following preamble to the legislation:

> WHEREAS, recent court decisions have mandated the early release of violent felony offenders, and
>
> WHEREAS, the people of this state and the millions of people who visit our state deserve public safety and protection from violent felony offenders who have previously been sentenced to prison and who continue to prey on society by reoffending, and
>
> WHEREAS, the Legislature finds that the best deterrent to prevent prison releasees from committing future crimes is to require that any releasee who commits new serious felonies must be sentenced to the maximum term of incarceration allowed by law, and must serve 100 percent of the court-imposed sentence,

NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Ch. 97-239, at 4393, Laws of Fla.

The Legislature then crafted six sections to Chapter 97-239 that dealt directly with those who would reoffend upon release from custody. These six sections do not violate the single subject requirement.

The single subject requirement of article III, section 6 of the Florida Constitution 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). The single subject requirement is satisfied if a "reasonable explanation exists as to why the legislature chose to join the two subjects within the same legislative act. . . ." Id. at 4. Similarly, the Supreme Court has spoken of the need for a "cogent relationship" between the various sections of the enactment. Bunnell v. State, 453 So. 2d 808, 809 (Fla. 1984). Furthermore, ". . . wide latitude must be accorded the legislature in the enactment of laws" and a court should "strike down a statute only when there is a plain violation of the constitutional requirement that each enactment be limited to a single subject." State v. Lee, 356 So. 2d 276, 282 (Fla. 1978). "The act may be as

broad as the legislature chooses provided the matters included in the act have a natural or logical connection." Martinez v. Scanlan, 582 So. 2d 1167, 1172 (Fla. 1991). "The test for determining duplicity of subject is whether or not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort." Burch v. State, 558 So. 2d 1, 2 (Fla. 1990).

A careful reading of the provisions of Chapter 97-239, Laws of Florida, compels the conclusion that the requisite natural or logical connection between the various sections exists. All of the amendments contained in Chapter 97-239 deal with the release, recapture, and resentencing of convicted felons, regardless of the type of release.

In addition to enacting the "Prison Releasee Reoffender Punishment Act," Chapter 97-239 also created subsection six (6) of section 944.705, which requires that inmates released from prison be given notice of section 775.082. This amendment clearly involves the release of inmates and does not violate the single subject provision of the Florida Constitution. Chapter 97-239 also amended section 947.141, which deals with "violations of conditional release, control release, or conditional medical release." This amendment is also related to the subject of released inmates in that it deals with ramifications when an

inmate's release is revoked. Chapter 97-239, amended section 948.06, section 948.01, and section 948.14, all deal with probation and community control. Again, if an inmate is on probation or community control, he is released from jail under certain conditions. Thus, these amendments also deal with the release of inmates and do not violate the single subject rule. Moreover, the amendment of section 958.14 merely states that Youthful Offenders are also governed by section 948.06(1).

Chapter 97-239 is a means by which the Legislature attempted to protect society from those who commit crime and are released into society. The means by which this subject was accomplished involved amendments to several statutes. The amendment of several statutes in a single bill does not violate the single subject rule. See Burch, 558 So. 2d at 3.

The interrelated nature of the different provisions of 97-239 presents a situation that is highly analogous to that which was addressed by the Supreme Court in Burch. See id. Chapter 97-243, Laws of Florida, dealt with many disparate areas of criminal law, which fell into three broad areas: 1) comprehensive criminal regulations and procedures; 2) money laundering; and 3) safe neighborhoods. See Burch, 558 So. 2d at 3. Those provisions were deemed to all bear a "logical relationship to the single subject of

controlling crime, whether by providing for imprisonment or through taking away the profits of crime and promoting education and safe neighborhoods." Id. The Court noted that "[t]here was nothing in this act to suggest the presence of log rolling, which is the evil that article III, section 6, is intended to prevent. In fact, it would have been awkward and unreasonable to attempt to enact many of the provisions of this act in separate legislation." Id. If anything, the connection between the provisions of the act in the instant case is considerably clearer, without having to resort to such broad links as the regulation of crime.

Yet another case providing a strong analogy is Smith v. Dep't of Ins., 507 So. 2d 1080 (Fla. 1987), where numerous, disparate, legislative provisions regarding tort reform and insurance law were deemed not to violate the single subject requirement of the Constitution. The Court applied a common sense test, rejecting claims that laws dealing with both tort and contractual causes of action could not be addressed in the same legislation. See id. at 1087.

By contrast, in one of the cases in which the single subject requirement was held to have been violated, Johnson, there was no plausibly cogent connection between career criminal sentencing and the licensing laws for private investigators who repossess motor

vehicles. See Johnson, 616 So. 2d at 4. Likewise, in Bunnell, there was no connection between the creation of a new substantive offense - obstruction of law enforcement by false information - and the creation of the Florida Council on Criminal Justice. See Bunnell, 453 So. 2d at 809. The instant case must be governed by those cases in which a reasonable connection has been found, with deference given to the legislature. The common sense test applied by the Supreme Court in other cases is clearly satisfied in this case.

In the instant case below, the 4th DCA relied on the rationale of Young v. State, 719 So.2d 1010 (Fla. 4th DCA 1998), rev.denied, 727 So.2d 915 (Fla. 1999) to conclude that Chapter 97-239 does not violate the single subject requirement. As the court stated in Young:

> The test for determining duplicity of subject "is whether or not the provisions of the bill are designed to accomplish separate and disassociated objects of legislative effort." *Burch v. State*, 558 So.2d 1, 2 (Fla. 1990)(quoting *State v. Thompson*, 120 Fla. 860, 163 So. 270, 283 (Fla. 1935)). Chapter 97-239, Laws of Florida, in addition to adding section 775.082(8), also amended sections 944.705, 947.141, 948.06, 948.01 and 958.14. The preamble to the legislation states its purpose was to impose stricter punishment on reoffenders to protect society. Because each amended section dealt in some fashion with reoffenders, we conclude the statute meets that test.

Id. at 1012.

Since Chapter 97-239 does not violate the single subject requirement, Petitioner is not entitled to any relief on that ground.

2) **Separation of Powers**

Petitioner asserts that Chapter 97-239 violates Article II, Section 3 of the Florida Constitution - separation of powers. Petitioner's specific complaint is that PRR prevents the trial court from exercising discretion - giving all discretion to the state's attorney. The 4th DCA found below:

> In State v. Wise, 24 Fla.L.Weekly D657 (Fla. 4th DCA Mar. 10, 1999), rev. granted, Table No. 95,230 (Fla. Aug. 5, 1999), we construed the statute in a way that reserved some discretion in the trial court for sentencing, by interpreting section 775.082(8)(d)1. As placing responsibility with the trial court to make findings of fact and exercise its discretion in determining the application of an enumerated exception to the mandatory sentence. See also State v. Cotton, 728 So.2d 251 (Fla. 2d DCA 1998) rev. granted, No. 94,996 (Fla. June 11, 1999). Such a retention of judicial discretion supports a finding that the statute does not violate the separation of powers clause. See London v. State, 623 So.2d 527, 528 (Fla. 1st DCA 1993)(referring to habitual offender statute).

Rollinson, 743 So.2d at 588.

Further, neither mandatory sentences nor prosecutorial

discretion in classifying defendants for purposes of sentencing poses constitutional difficulties. While the legislature's establishing of mandatory sentencing does remove a trial judge's discretion in this area, there is nothing unconstitutional because the legislature has exercised its traditional power to set criminal penalties. Additionally, a prosecutor's power to pursue an enhancement under the Act is no more problematic than the power to choose between offenses with different maximum sentences.

Separation of powers is intended to preserve the system of checks and balances built into the government as a safeguard against the encroachment or aggrandizement of one branch at the expense of the other. Buckley v. Valeo, 424 U.S. 1, 122 (1976). Article II, section 3, of the Florida Constitution provides:

> Branches of Government - The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

The legislature, not the judiciary, determines maximum and minimum penalties for violations of the law. State v. Benitez, 395 So.2d 514, 518 (Fla. 1981). The power to set penalties for criminal offenses is the legislature's, not the judiciary's. Chapman v. United States, 500 U.S. 453, 467 (1991). Moreover, there is no

constitutional requirement of individualized sentencing. United States v. Oxford, 735 F.2d 276, 278 (7th Cir. 1984). Hence, there is no separation of powers conflict created by the legislature establishing a mandatory sentencing scheme.

Additionally, a sentencing program which involves prosecutorial discretion is not unconstitutional. Oyler v. Boles, 368 U.S. 448, 456 (1962) (upholding West Virginia's recidivist plan over contention it placed unconstitutional discretion with prosecutor). Florida's State Attorneys routinely make prosecuting and sentencing decisions that affect significantly the length of a defendant's prison term. In short, prosecutors already have immense discretion in this area.

Similarly, the federal three strikes law, which contains a mandatory life without parole provision, has withstood separation of powers challenges. The mandatory nature of the punishment does not violate the federal doctrine of separation of powers. United States v. Rasco, 123 F.3d 222, 226 (5th Cir. 1997)(mandatory nature of the sentences did not violate the doctrine of separation of powers and while the judiciary has exercised varying degrees of discretion in sentencing throughout the history of this country's criminal justice system, it has done so subject to congressional control because the power to fix sentences rests ultimately with

the legislature, not the judiciary); U.S. v. Washington, 109 F.3d at 335, 338 (7th Cir. 1997)(federal three strikes law does not offend principles of separation of powers).

The Florida Courts have addressed separation or powers challenges in mandatory sentencing and prosecutorial discretion claims and the Florida Supreme Court has rejected assertions that minimum mandatory sentences are an impermissible legislative usurpation of executive branch powers. Owens v. State, 316 So.2d 537 (Fla. 1975); Dorminey v. State, 314 So.2d 134 (Fla. 1975)(determination of maximum and minimum penalties remains a matter for the legislature and such a determination is not a legislative usurpation of executive power); Florida Rules of Criminal Procedure Re: Sentencing Guidelines, 576 So.2d 1307, 1308 (Fla. 1991)(it is a "purely legislative decision" whether or not to adopt proposed sentencing guidelines). The mandatory nature of the instant statutory scheme should be found constitutional.

In Barber v. State, 564 So.2d 1169 (Fla. 1st DCA 1990), rev. denied, 576 So. 2d 284 (Fla. 1990), the appellate Court held that the habitual offender statute did not violate the separation of power clause in the face of Barber's claim the prosecutor had "unfettered discretion". This issue was rejected as meritless because the "type of discretion afforded the prosecutor under this

law is constitutionally permissible, for it is no different from that afforded a prosecutor in other areas of the law." Continuing, the First District Court of Appeal opined, "[h]ere, the Florida Legislature has fulfilled its duty by informing the courts, prosecutors, and defendants of the permissible punishment alternatives available under the habitual offender statute and under the sentencing guidelines." Id. (quoting United States v. Batchelder, 442 U.S. 114, 126 (1979)) Here, as in Barber, the Florida Legislature fulfilled its duty by informing courts, defendants, and prosecutors of the punishment for prison releasee reoffenders. The power to set penalties is the legislature's and it may remove a trial Court's discretion. Because the legislature is exercising its own powers, by definition, this cannot be a separation of powers problem.

Additionally, while the legislature does allow prosecutors discretion to seek prison releasee reoffender sentences under the Act, this type of discretion is proper when accompanied by legislative standards and guidelines. Allowing other branches some flexibility as long as adequate legislative direction is given to carry out the ultimate policy decision of the legislature does not violate separation of powers principles. Barber, 564 So.2d at 1171. The legislature stated its intent regarding this sentencing plan by

providing in section 775.082(8)(d)1, Florida Statutes (1997), if a releasee meets the criteria he should "be punished to the fullest extent of the law." The Legislature included in section 775.082(8)(d)2, Florida Statutes (1997), a requirement that the prosecutor write a "deviation memorandum" explaining the decision not to seek prison releasee reoffender sanctions.

In Lightbourne v. State, 438 So.2d 380 (Fla. 1983), cert. denied, 514 U.S. 1038 (1995), the Florida Supreme Court held the penalty statute did not violate separation of power principles. Lightbourne claimed that the penalties statute infringed on the judiciary powers because it eliminated judicial discretion in sentencing by fixing the penalties for capital felony convictions, thereby, unconstitutionally violating the separation of power doctrine. Id. at 385. The Supreme Court characterized this claim as "clearly misplaced" reasoning the determination of penalties is a legislative matter. Only when a statutory sentencing strategy is cruel and unusual on its face may it be challenged as violative of the separation of powers doctrine. Sowell v. State, 342 So.2d 969 (Fla. 1977)(upholding three year mandatory minimum term for use of a firearm against a separation of powers challenge).

Based upon the foregoing, it is clear Chapter 97-239, codified as §775.082, does not violate the separation of powers doctrine.

Since PRR is constitutional, Petitioner's sentence as a Prison Releasee Reoffender should be affirmed.

CONCLUSION

Wherefore, based on the foregoing arguments and the authorities cited therein, this Court should uphold Petitioner's sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Brief of Respondent on Merits" has been furnished by U.S. Mail, to: JOSEPH R. CHLOUPEK, Public Defender, 15th Judicial Circuit of Florida, Criminal Justice Building/6th Floor, 421 3rd Street, West Palm Beach, Florida 33401 on June _____, 2000.

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