IN THE SUPREME COURT OF FLORIDA

KEVIN ROLLINSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. SC 96,713
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Kevin Rollinson, was the defendant in the prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Before the Fourth District Court of Appeals, Respondent was Appellee, and Petitioner was Appellant. In the brief, the respective parties will be identified as they appear before this Court.

The following symbol will be used:

"R" Record on Appeal

“SR” Supplemental Record on Appeal

“T” Transcript on Appeal.

CERTIFICATE OF TYPE AND SIZE

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 Respondent hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that has 10 characters per inch.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by information with Burglary of a Structure, Grand Theft, and Battery on a Law Enforcement Officer (R 10-11). He was found guilty as charged on all three counts after a jury trial (R 103; T. 413). Prior to sentencing, defense counsel raised a constitutional challenge to Florida Statutes, Section 775.082 (9) Florida Statutes (1997), the "prison releasee reoffender act" (SR 9). Counsel had filed a written motion challenging the constitutionality of this statute prior to trial (R 93-100). Specifically, counsel argued that the aforementioned statute violated equal protection, due process, and the "single subject" requirement of the Florida Constitution, as well as constituting "improper interference" with judicial discretion at sentencing (SR 10-12, 15). The trial court denied this motion, after which Petitioner was sentenced on Counts I and II to 34 months imprisonment; on Count III, Petitioner was sentenced to 60 months prison as a "prison releasee reoffender" (SR 15-16, 27-28; R 122, 139, 151, 154).

Thereafter, Petitioner appealed his "prison releasee reoffender" (PRR) sentence to the Fourth District Court of Appeals (DCA), raising the same constitutional challenges presented by counsel pretrial. However, that Court rejected Petitioner's

constitutional challenges en mass, Rollinson v. State, 743 So.2d 585 (Fla. 4th DCA 1999). This appeal follows.

SUMMARY OF THE ARGUMENT

Petitioner was improperly sentenced as a prison releasee reoffender, pursuant to Florida Statutes, Section 775.082 (9) (1997), since this statute violated both the single subject and separation of powers provisions of the Florida Constitution. Wherefore, Rollinson v. State, 743 So. 2d 585 (Fla. 4th DCA 1999) must be disapproved, and this cause remanded for resentencing as to Count III of the information.

ARGUMENT

ROLLINSON V. STATE, 743 So.2d 585 (Fla. 4th DCA 1999) MUST BE VACATED AND REMANDED WITH DIRECTIONS.

Prior to trial, defense counsel for Petitioner challenged the constitutionality of Florida Statutes, Section 775.082 (9),the PRR statute, on various constitutional grounds, including "single subject" and "separation of powers" (R 93-100). The trial court rejected these arguments, then sentenced Petitioner on Count III to 60 months imprisonment under the PRR statute (R 139, 154). On appeal to the Fourth DCA, that Court rejected Petitioner's constitutional arguments against PRR sentencing in toto, 743 So.2d 585 (Fla. 4th DCA 1999). This was error.

Florida Statutes, Section 775.082 (9) (a) (1), the "prison releassee reoffender" Act, provides in pertinent part:

> (1) "prison releasee reoffender" means any defendant who commits, or attempts to commit: . . .
>
> (2) any crime that involves the use or threat of physical force or violence against an individual. . . within three years of being released from a state correctional facility operated by the Department of Corrections or a private vendor. . .
>
> (3) if the state attorney determines that a defendant is a prison releasee reoffender is defined in subparagraph 1, the state attorney may seek that the court sentence the defendant as a prison releasee reoffender. On proof from the state attorney that establishes by a preponderance of the evidence the defendant is

> a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines, and must be sentenced as follows:
>
> (a) for a felony of the third degree, by a term of imprisonment of five years
>
> (b) a person sentenced under (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence. . .
>
> (d) (1) it is the intent of the legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.
>
> (2) for every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing, and place such an explanation in the case file maintained by the state attorney . . . .

Since the crimes for which Petitioner was charged occurred on July 19, 1997 (T. 122-124, 162), and the Session Law creating PRR sentencing, Chapter 97-239, Laws of Florida, became effective on May 30, 1997, Petitioner clearly was eligible for PRR sentencing.

However, this Session Law violated both Article III, Section 6 and Article II, Section 3 of the Florida Constitution.

Article III, Section 6 provides in pertinent part:

> Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

In Thompson v. State, 25 Fla. Law Weekly S1, 2 (Fla. December 22, 1999), this Court discussed the "three-fold purpose" underlying the single subject requirement as follows:

> (1) to prevent hodgepodge or "log rolling" legislation, i.e., putting two unrelated matters into one act;(2) to prevent surprise or fraud by means of provisions in bills of which the titles give no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and (3) to fairly apprise the people of subjects of legislation being considered, in order that they may have opportunity of being heard thereon. . . the purpose of this constitutional prohibition against the plurality of subjects in a single legislative act is to prevent "log rolling" where a single enactment becomes a cloak for dissimilar legislation having no necessary or appropriate connection with the subject matter. . . the act may be as broad as a legislature chooses provided the matters included in the act have a natural or logical connection.

(Citations omitted); See also Heggs v. State, 25 Fla. Law Weekly S137, 139 (Fla. February 17, 2000). In Thompson, this Court further noted "[t]hus, in analyzing whether Chapter [97-239] meets

the requirements of the single subject rule, it is clear that we must review the various sections of that chapter law to determine whether they have a natural or logical connection," 25 Fla. Law Weekly at S2.

Chapter 97-239, is titled "Criminal Justice-Prison Releasee Reoffender Punishment Act-Creation;" after relating the various statutes and subsections created or amended by this Act, Chapter 97-239 then states:

> Whereas, recent court decisions have mandated the early release of violent felony offenders, and
>
> Whereas, the people of the 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 deterent 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 law 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.

Sections 1 and 2 then created the "Prison Releasee Reoffender Punishment Act" by amending Section 775.082, Florida Statutes, while Section 3 added a subsection to Section 944.705 detailing the

necessity for informing prison inmates of the PRR statute. Clearly, Sections 1-3 of Chapter 97-293 are all “naturally and logically connected” with PRR sentencing.

However, Sections 4-6 are not so related. For example, Section 4 amends subsections (6) of Section 947.141 to state that an inmate on conditional release, control release, or conditional medical release “shall,” rather than “may,” be “deemed to have forfeited all game-time or commutation of time for good conduct, as provided for by law, earned up to the date of release;” Section 5 amended subsections (1) and (6) of Section of 948.06 to allow “any law enforcement officer who is aware of the probationary or community control status of the probationer or offender on community control or any parole or probation supervisor [to] arrest or request a county or municipal law enforcement officer to arrest such probationer or offender without warrant . . whenever probation, or community control, or control release, including the probation or community control portion of the split sentence, is violated, the offender, by reason of his misconduct <u>shall</u> be deemed to have forfeited all gain-time or commutations of time for good conduct. . .” Petitioner would suggest that the subjects of Sections 4-6 of Chapter 97-239, Laws of Florida do not in any way relate to PRR sentencing, and hence violate the single subject clause of the

Florida Constitution. For that reason, Appellant's PRR sentence on Count III of the information was improperly imposed.

In addition, Section 775.082 (9) violates Article II, Section 3 of the Florida Constitution, which states:

> Branches of Government
>
> The powers of the state government shall be divided into legislative, executive, and judicial branches. A person belonging to one branch shall not exercise any powers appertaining to either of the other branches unless expressly provided herein.

This Court has previously described the separation of powers provision of the Florida Constitution as "essential to the effect of our constitutional system of government; this doctrine is designed to avoid excessive concentration of power in the hands of one branch," In Re Advisory Opinion to Governor, 276 So.2d 25, 30 (Fla. 1973). The separation of powers clause is directed only at those powers which belong exclusively to a single branch of government, Sims v. State Department of Health and Rehabilitative Services, 641 So. 2d 937 (Fla. 3d DCA 1994) review denied 649 So.2d 870 (Fla. 1994). Thus:

> Under Florida's constitutional form of government no branch of state government can arrogate to itself powers that properly inhere to any separate branch.

State v. Ashley, 701 So.2d 338, 342, n.15 (Fla. 1997). As a result, where a statute purports to give one branch of government powers textually assigned another branch by the Florida Constitution, then that statute is unconstitutional, B.H. v. State, 645 So.2d 987, 992 (Fla. 1994) certiorari denied 515 U.S. 1132, 115 S.Ct. 2559, 132 L.Ed. 2d 812 (1994).

In this case, while the PRR statutes states that a state attorney "may" seek to have a sentencing court impose a PRR sentence "upon proof from the state attorney that establishes a preponderance of the evidence that the defendant is a prison releasee reoffender as defined in this session," the statute goes on to state "such defendant is not eligible for sentencing under the sentencing guidelines, and must be sentenced as follows . . ." Moreover, the PRR statute states the "intent of the legislature" that PRR inmates "be punished to the fullest extent of the law and is provided in [that] subsection," then places the burden on a prosecuting attorney to locate "extenuating circumstances" preventing imposition of a PRR sentence; finally, the "state attorney must explain [any] sentencing deviation [from PRR sentencing] in writing and place such an explanation in the case file maintained by the state attorney," 775.082 (9) (d) (2). Under the aforementioned sentencing regime, effectively the sentencing

decision is vested in the state attorney, rather than a trial court, since the statute requires PRR sentencing if the state attorney establishes a factual predicate for such sentence; additionally, the state attorney is required to justify any decision not to pursue PRR sentencing by the statute. This Court has previously rejected "separation of powers" challenges to "mandatory" sentencing provisions where the statute in question allowed a trial judge discretion not to impose such a sentence, see e.g. Seabrook v. State, 629 So.2d 129, 130 (Fla. 1993) (habitual felony offender statute did not violate separation of powers provision "where a trial judge [had] discretion not to sentence defendant as habitual felony offender"); accord King v. State, 681 So.2d 1136, 1138-1139 (Fla. 1996) (habitual felony offender sentencing permissive where trial court finds such sentence "not necessary for protection of the public"); compare State v. Benitez, 395 So.2d 514, 519 (Fla. 1981) (drug trafficking "mandatory minimum" sentence not violative of separation of powers doctrine where "under the statute, the ultimate decision on sentencing rests with the judge who must rule on any [prosecutorial] motion for reduction or suspension of sentence," as "so long as the statute does not wrest from the court final discretion to sentence, statute does not infringe upon the constitutional division of

responsibilities" (citation omitted)); Stone v. State, 402 So.2d 1330, 1332 (Fla. 1st DCA 1981) (same). The corollary of Seabrook and Benitez implied in those cases is that where, as here, a statute prevents a sentencing court from exercising discretion as to whether or not to impose a specific mandatory sentence, such a statute would in fact violate Article II, Section 3, the "separation of powers" clause of the Florida Constitution. Petitioner would suggest that such a circumstance exists under Florida Statutes, Section 772.082 (9) (1997), rendering Petitioner's PRR sentence in violation of that constitutional provision as well.

As a consequence, this Court must disapprove of the Fourth DCA's decision in Rollinson v. State, 743 So.2d 585 (Fla. 4th DCA 1999), then vacate Petitioner's sentence on Count III of the Information and remand with directions that Petitioner be resentenced as to that count.

CONCLUSION

Petitioner's sentence on Count III must be vacated and remanded with proper directions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished Leslie T, Campbell, Assistant Attorney General, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida by courier this _____ day of April, 2000.

_____
Attorney for Kevin Rollinson