

IN THE SUPREME COURT OF FLORIDA

DARON D. MERRITT,

Petitioner,

v.

CASE NO. 96,763

STATE OF FLORIDA,

Respondent.

SUPPLEMENTAL REPLY BRIEF OF PETITIONER

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_____ :

SUPPLEMENTAL REPLY BRIEF OF PETITIONER

I. PRELIMINARY STATEMENT

Petitioner will refer to the parties and the record in the same manner utilized in the *Supplemental Initial Brief Of Petitioner* dated April 17, 2001. Reference to *Respondent's Supplemental Answer Brief On The Merits* dated June 26, 2001, will be by use of the symbol "RB" followed by the appropriate page number in parentheses.

Attached to this reply brief is an appendix containing a copy of the *Notice Of Supplemental Authority* filed November 20, 2000, in ***Foresta v. State***, No. SC00-428. Reference to the appendix will be by use of the symbol "A" followed by the appropriate page number in parentheses.

II. ARGUMENT

ISSUE V:

THE TRIAL COURT ERRED IN SENTENCING
PETITIONER AS A PRISON RELEASEE REOFFENDER
FOR THE OFFENSE OF BURGLARY OF AN UNOCCUPIED
DWELLING.

The state argues first that the issue was not preserved and not fundamental error in light of petitioner's 25-year sentence as a habitual felony offender (RB-7-8). However, as the state recognizes, this argument has been rejected by the Court. See **Leonard v. State**, 760 So. 2d 114 (Fla. 2000) and **State v. McKnight**, 764 So. 2d 574 (Fla. 2000). Accord: **Seccia v. State**, 26 F.L.W. D961 (Fla. 1st DCA April 5, 2001).

On the merits, the state first asserts **State v. Huggins**, 26 F.L.W. S174 (Fla. Mar. 22, 2001), was wrongly decided (RB-9-14). Petitioner disagrees and relies upon the Court's analysis in **Huggins**.

Petitioner further argues that it is axiomatic that legislative intent is the controlling principle of statutory construction. Attached to this brief is an appendix containing a copy of the *Notice Of Supplemental Authority* filed November 20, 2000, in the case of **Foresta v. State**, No. SC00-428. It is well-settled that the Court may take judicial notice of its own records. **Foxworth v. Wainwright**, 167 So. 2d 868 (Fla. 1964). It is crystal clear from the floor debate in both the house and

senate that it was the intent of the legislature that the prison releasee reoffender statute **not** apply to the offense of burglary of an unoccupied dwelling (A-1-4).

Yet the state relies upon a "clarifying" amendment passed by the 2001 legislature (RB-14-16).

The fact that a House Staff Analysis refers to the amendment as "clarifying" does not make it so. The amendment to which the analysis referred was offered by the Committee on Criminal Justice Appropriations (Amendments No. 3 to HB1465) and included a title amendment which inserted:

redefining the term "prison releasee reoffender" to include a defendant who commits or attempts to commit burglary of a dwelling or burglary of an unoccupied structure.

The title amendment thus recognizes that the amendment constituted a substantive change in the law, not a mere clarification.

Moreover, views of a subsequent legislature cannot override the unmistakable intent of the enacting one. **Teamsters v. United States**, 431 U.S. 324 (1977). Since the legislative intent to exclude burglary of an unoccupied dwelling from the statute is unmistakably clear, any view to the contrary by the 2001 legislature is of no effect. See also **Consumer Product Safety Commission v. GTE Sylvania, Inc.**, 447 U.S. 102, 118 (1980) ("[S]ubsequent legislative history will rarely override a

reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment.”)

Finally, subsequent legislation cannot overcome the statutory mandate, Section 775.021(1), Florida Statutes (1999), that ambiguous statutes must be construed in favor of a defendant. In *Parole Commission v. Cooper*, 701 So. 2d 543, 545 (Fla. 1997), the Court rejected an argument similar to that made by the state here because “ambiguous statutes must be construed in favor of a defendant.”

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Charmaine M. Millsaps, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Criminal Appeals Division, Tallahassee, Florida, and a copy has been mailed to petitioner, DARON D. MERRITT, #291100, Jackson Correctional Institution, 5563 10th Street, Malone, Florida 32445, this ____ day of July, 2001.

CARL S. MCGINNES

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that the foregoing Supplemental Reply Brief of Petitioner has been prepared in Courier New 12 point type.

CARL S. MCGINNES

