IN THE SUPREME COURT OF FLORIDA

MICKEY PALMIERI, Petitioner, v. STATE OF FLORIDA, Respondent.	Case No. 97,062

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

ANSWER BRIEF OF RESPONDENT ON THE MERITS

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SUMMARY OF THE ARGUMENT

The court properly denied Petitioner's motion to declare the prison releasee reoffender statute unconstitutional. The Act does not violate the single subject doctrine, the separation of powers doctrine, the prohibition against cruel and unusual punishment, double jeopardy, nor is it void for vagueness, a denial of due process of law or a denial of equal protection.

ARGUMENT

ISSUE

WHETHER THE PRISON RELEASEE REOFFENDER ACT IS UNCONSTITUTIONAL. (As restated by Respondent)

1) Single Subject Violation

The ACT does not violate the single subject requirement under the Florida Constitution. This argument has already been rejected by the Fourth District in Young v. State, 719 So. 2d 1010 (Fla. 4th DCA 1998), *rev. denied*, 727 So.2d 915 (Fla. 1999). As the Court stated in Young:

> 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.

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 (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.

2) Separation of Powers

The Act does not violate the doctrine of separation of powers. Petitioner first argues that the Act restricts the ability of the parties to plea bargain leaving the prosecution only the limited reasons set forth in s. 775.082(8)(d) to justify not seeking the mandatory penalties provided by the Act. Such action by the legislature is valid. A defendant is not constitutionally entitled to a plea offer, *see* Winokur v. State, 605 So.2d 100, 102 (Fla. 4th DCA 1992) and Fairweather v. State, 505 So.2d 653, 654 (Fla. 2d DCA 1987). The legislature can, therefore, restrict a prosecutor's right to engage in plea bargaining. See also Turner v. State, 24 Fla. L. Weekly D 2075 (Fla. 1st DCA September 9, 1999).

The Act does not violate the doctrine of separation of powers by granting the victim with the ultimate decision regarding whether

a particular defendant will be the mandatory terms imposed by the Act. The victim doe not have the ultimate power to determine whether the Act will or will not be applied in a given situation. Either the Court, pursuant to the reasoning of this court in State v. Cotton, 728 So.2d 251 (Fla. 2d DCA 1998), *review pending* in State v. Cotton, No. 94,996, and the Fourth District in State v. Wise, 24 Fla. L. Weekly D 657, 558 (Fla. 4th DCA March 10, 1999) or the state attorney pursuant to the reasoning of the Third District in McKnight v. State, 727 So.2d 314 (Fla. 3d Dca 1999), the First District in Woods v. State, 24 Fla. L. Weekly D 831 (Fla. 1st DCA March 26, 1999), and the Fifth District in Turner v. State, *supra,* has the "discretion" not to impose the mandatory penalties provided by the Act if in accordance with s. 775.082(8)(d)1.c, "the victim does not want the offender to receive the mandatory prison sentence and provides a written statement to that effect.."

The operative word as used by all the district courts of appeal is "discretion". The victim's desire is not binding regardless of whether the discretion lies with the state attorney or the court. Either the state attorney or the court considers the wishes of the victim but neither is bound by the victim's desire not to impose the mandatory sentence. Even the Fourth District in Wise, *supra.* at D658, which along with this court in Cotton, *supra*., held that the trial court has the "discretion" not to impose the mandatory sentences required under the act if the victim

does not wish the sentence to be imposed, reasoned that the court still has the discretion to impose the mandatory prison term in spite of the victim's wishes to the contrary:

> The trial court is not required to accept the victim's written statement in mitigation. It is left to the trial court in the exercise of its sound discretion whether or not to accept the victim's written statement in mitigation or reject it and sentence the defendant under subsection (8)(a)1.

See also Turner v. State, supra. This issue has been argued in greater depth with regard to issue I in the instant appeal.

This discretion is similar, Respondent submits, to the prosecutor's discretion in filing charges. *See* State v. Gonzalez, 695 So.2d 1290, at 1292 (Fla. 4th DCA 1997)("[t]he determination as to whether to continue a prosecution rests with the prosecutor, the arm of government representing the public interest, and not with the victim of a crime or the trial court."); McArther v. State, 597 So.2d 406, 408 (Fla. 1st DCA 1992)(Decision to initiate criminal prosecution rests with the state attorney, not the victim.) It is also similar to the court's discretion in determining whether to depart from the guidelines. Even though statutory grounds may exist to justify a departure, the court is not required to depart. See State v. Herrin, 568 So.2d 920, at 922 (Fla. 1990) ("We approve the downward departure in Herrin's case. In so doing, *we do not suggest that trial judges are under any compulsion to provide downward departure* when substance exists. *A trial judge may always*

impose a sentence within the range of the guidelines. However, in those instances where substance and amenability to rehabilitation both exist, *the judge retains the discretion to impose a sentence below the range of the guidelines."* (Emphasis added).

The Act does not violate the doctrine of separation of powers by removing all sentencing discretion from the trial court if the state seeks and proves that a defendant qualifies for such a mandatory sentence. This argument has been specifically rejected by the First, Third and Fifth District Courts of Appeal which have considered it in Woods, *supra,* McKnight,*supra*, and Speed, 24 Fla. L. Weekly (Fla. 5th DCA, April 23, 1999).

Petitioner fails to show that the prison releasee reoffender statute's minimum mandatory sentencing scheme is any different from any other minimum mandatory. All minimum mandatory sentences strip the court of the power to sentence below the mandatory sentence. State v. Ross, 447 So.2d 1380 (Fla. 4th DCA 1984)(holding that the minimum mandatory sentencing statute operates to divest the trial court of its discretionary authority to place the defendant on probation and remanding for imposition of the minimum mandatory term of imprisonment). The prison releasee reoffender statute is, as the legislative history notes, a minimum mandatory sentence like any other minimum mandatory. Minimum mandatory sentences do not violate separation of powers principles. Therefore, the prison releasee reoffender statute does not present separations of powers

problems. Accordingly, the prison releasee reoffender statute is constitutional.

3) Cruel and Unusual Punishment

A plurality of the Supreme Court has rejected the notion that the Eighth Amendment's protection from cruel and unusual punishment extends to the type of offense for which a sentence is imposed; rather, it protects against cruel and unusual modes of punishment. See, Harmelin v. Michigan, 501 U.S. 957, 965-66, 979-85, 111 S.Ct. 2680, 2686-87, 2693-96, 115 L.Ed.2d 836 (1991); and U.S. v. Quinn, 123 F.3d 1415, 1425 (11th Cir. 1997). *Compare*, Smallwood v. Johnson, 73 F.3d 1343 (5th Cir. 1996)(Defendant's sentence of 50 years imprisonment for misdemeanor theft, enhanced under Texas' habitual offender statute, did not constitute cruel and unusual punishment); and Rummell v. Estelle, 445 U.S. 263, 100 S. Ct. 1133 (1980)(Defendant's sentence of life imprisonment did not constitute cruel and unusual punishment for conviction of obtaining $121 by false pretenses where sentence enhanced by recidivist statute). Therefore, Petitioner has not demonstrated that his enhanced punishment and sentencing is violative of the Eighth Amendment's proscription against cruel and unusual punishment.

Petitioner's argument that the Act fails to consider the factors of the prior conviction is irrelevant. As this Court as early as 1928 in Cross v. State, 199 So. 380, 3885-386 (Fla. 1928) cruel and unusual punishment is not inflicted upon one convicted of

a felony in this state by the imposition of the enhanced prescribed for habitual offenders which provided that upon a second or subsequent conviction for a felony greater punishment than for the first conviction shall be imposed. Petitioner's argument is more akin to an equal protection or substantive due process argument. As this Court stated in In Re Greenburg, 390 So.2d 40, 42 (Fla. 1980):

> The rational basis or minimum scrutiny test generally employed in equal protection analysis requires only that a statute bear some reasonable relationship to a legitimate state purpose. That the statute may result incidently in some inequality or that it was not drawn with mathematical precision will not result in invalidity. Rather, the statutory classification to be held unconstitutionally violative of equal protection under this test must cause different treatments so disparate as relates to difference in classification so as to be wholly arbitrary. (citations omitted)

Again in State v. Leicht, 402 So.2d 1153, 154-155 (Fla. 1981):

> The legislature has wide discretion in creating statutory classifications, and there is a presumption in favor of validity. (Citations omitted). Where equal protection has been violated depends on whether a classification is reasonably expedient for the protection of the public safety, welfare, health, or morals. (citation omitted). a classification based upon a real difference which is reasonably related to the subject purpose of the regulation will be upheld even if another classification or no classification might appear more reasonable. (citation omitted).

In King v. State, 557 So.2d 899, 902 (Fla. 5th DCA 1990) *rev.*

denied 564 So.2d 1086:

> Under substantive due process, the test is whether the statute bears a reasonable relation to permissible legislative objective and is not discriminatory, arbitrary, capricious or oppressive. (Citation omitted). Courts will not be concerned with whether the particular legislation in question is the most prudent choice, or is a perfect panacea, to cure the ills or achieve the interest intended; if there is a legitimate state interest which the legislation aims to effect, and if the legislation is a reasonably related means to achieve that intended end, it will be upheld. (citation omitted)
>
> The aim of the Act is to deter prison releasees from committing a felony by requiring that any releasee who commits a new serious felony be sentenced the maximum term of incarceration provided by law and that he/she serve 100 percent of the court-imposed sentence. Clearly the Act has a legitimate state purpose.

Petitioner argues that the Act arbitrarily discriminates between those who reoffend within 3 years after their release from prison and those who reoffend more than 3 years after their release from prison. This argument is without merit. Obviously, the legislature has the right to set time limitations. The fact that one defendant falls within the time limitation by one day and the other does not by one day is a reality of *life. Cf.* *Acton* v. Fort Lauderdale Hospital, 440 So.2d 1282, 1284 (Fla.1983):

> [S]ince no suspect classification is involved here, the statute need only bear a reasonable relationship to a legitimate state interest. Some inequity or imprecision will not render a statute invalid (Citation omitted).

LeBlanc v. State, 382 So.2d 299, 300 (Fla. 1980):

> [I]t is not the requirement of equal protection that every statutory classification be all inclusive. (citations omitted). Rather, the statute must merely apply equally to member of the statutory class and bear a reasonable relationship to some legitimate state interest. (Citations omitted)

As stated previously, the Act does not vest the victim with the power to determine whether the mandatory sentences under the Act shall be imposed and, therefore, Petitioner's cruel and unusual punishment argument based upon this theory of victim empowerment is without merit.

Petitioner argues that the Act constitutes cruel and unusual punishment because it only punishes those who commit enumerated felonies within three years after their release from the Florida state prison system but it does not apply to inmates who are released from federal prison, local jails or other state prisons. This argument has been rejected - in the context of not applying to federal convicts - in reference to an early habitual offender statute which applied only to state prisons in King v. State, *supra at 557:*

> As to equal protection, King claims that section 775.084 creates inequitable classes because it only applies to those whose prior were committed in the State of Florida (under-inclusive). In *Bell v. State*, 369 So.2d 932 (Fla. 1979), the supreme court addressed an equal protection argument challenge to a criminal statute:
>
> In order to constitute a denial of equal

> protection, the selective enforcement must be deliberately based on an unjustifiable or arbitrary classification. (Citation omitted). The mere failure to prosecute all offenders is no ground for a claim of denial of equal protection. (Citation omitted)
>
> *Id.* at 934.....Section 775.084 rationally advances a legitimate governmental objective. The classification created has some reasonable basis and thus does not offend the constitution simply because it may result in some inequity. Equal protection does not require the state to choose between attacking every aspect of a problem or not attacking it at all.

The reasoning is equally applicable in the instant case.

Petitioner argues that the Act can be applied to prison releasees even though they may have been released because they were wrongly convicted. It is clear that the intent of the legislature was to require mandatory maximum imprisonment terms for those who "reoffend" by committing an enumerated offense within 3 years after their release from prison after being released from prison as a result of a prior conviction. There was no intent to apply the ACT to those who commit an offense within 3 years after their release where the release is due to the reversal of their prior conviction because in that case the defendant would not be a prison releasee "**reoffender**" within three year within three years of his release from prison.

This is similar to requiring that a prior conviction be final before it can be used to enhance punishment for a subsequent

offense under as an habitual felony offender. *See* State v. Peterson, 667 So.2d 199 (Fla. 1996). If the defendant is released from prison as a result of his conviction being overturned, he is not a "reoffender" if he commits a new offense within three years of his release from prison because he does not have the prior conviction which is necessary to be a "reoffender". Just as the habitual felony offender sentences are designed to "protect society from habitual criminal offenders who persist in the commission of crime after having been theretofore convicted and punished for crimes previously committed," Peterson, *id*. at 200, so too it can be said that the prison releasee reoffender sentences were designed to protect society from criminals who commit an enumerated offense within three years after having been theretofore released from imprisonment for a crime for which he/she was previously convicted and punished.

Although the statute may not be as explicit in this regard as it could be, this appellate court should interpret the statute to apply only to those who commit a new enumerated offense within three years of their release from imprisonment from a prior final conviction. As was stated in Firestone v. News-Press Pub. Co., Inc.,538 So.2d 457, at 458 (Fla. 1989):

> Whenever possible, a statute should be construed so as not to conflict with the constitution. *State v. Gale Distributors, Inc.*,349 So.2d 150 (Fla. 1977). Just as federal courts are authorized to place a narrowing construction on acts of Congress,

> *Boos v. Barry,* 485 U.S. 312, 108 S.Ct. 1157, 99 L. Ed.2d 333 (1988), this Court may, under proper circumstances, do the same with a state statute when to do so does not effectively rewrite the enactment. *Brown v. State*, 358 So.2d 16 (Fla. 1978).

4) Vagueness

The crux of the Petitioner's "vagueness" attack lies in argument that the statute falls for failing of its exceptions (s. 775.082((d)a.-d.) To define "sufficient evidence", "material witness", "extenuating circumstances" and "just prosecution".

As to sufficient evidence, this may plainly read as proof beyond a reasonable doubt. Material has been defined as "important; more or less necessary; having influence and effect; going to the merits; having to do with the matter, as distinguished from the form." Black's Law Dictionary, 4th Ed. West Publishing Co. 1968. "Witness" has been defined as "A person whose declaration under oath (or affirmation) is received as evidence for any purpose, whether such declaration be made of oral examination or by deposition or affidavit." Id. Black's Law dictionary similarly defines "just" and "extenuating circumstances". As was stated by the Second District Court of Appeals in State v. De La Llana, 693 So.2d 1075, 1078 (Fla. 2d DCA):

> [I]t is a well settled principle of constitutional jurisprudence that. "[t]he legislature's failure to define a statutory term does not in and of itself render a penal statute unconstitutionally vague." *State v. Hogan*, 387 So.2d 943, 945 (Fla. 1980). In the absence of such a definition, a court may

> resort to a dictionary to ascertain the plain and ordinary meaning which the legislature intended to describe to the term, *see Gardner v. Johnson,* 451 So.2d 477, 478 (Fla. 1984), as well as case law which has construed the term in the context of another statute. *See Tingley v. Brown*, 380 So.2d 1289, 1290 (Fla. 1980).

Furthermore, Petitioner has failed to show that the supra at provided for in s. 775.082(8)(d)1.a-d are being arbitrarily or capriciously enforced. The fact that the state attorney has discretion to determine who the exceptions or the Act itself shall apply to is not reason to invalidate the Act. This argument has been made and rejected in the past couched in terms of an equal protection argument. As The First District noted in Woods, *supra* at D 834, a similar claim was rejected in reference to the habitual offender statute in Barber v. State, 576 So.2d 1169, 1170-1171 (Fla. 1st DCA) *review denied,* 576 So.2d 284:

> Barber claims that the statute violates the equal protection clause because nothing in the law prevents two defendants with similar or identical criminal records from being treated differently - one may be classified as a habitual felony offender, while the other might instead be sentenced under the guidelines...

The United States Supreme Court, however, has held on numerous occasions that the guarantee of equal protection is not violated when prosecutors are given the discretion by law to "habitualize" only some of those criminals who are eligible, even though their discretion is not bound by the statute...Mere selective,

discretionary application of a statute is permissible; only a contention that persons within the habitual-offender class are being selected according to some unjustified standard such as race, religion, or other arbitrary classification, would raise a potentially viable challenge...

Similarly, the executive branch is properly given the discretion to choose which available punishments to apply to convicted offenders. Id.

5) DUE PROCESS

Petitioner's argument that the Act violates due process by (1)inviting discriminatory application by the state attorney who, has the total authority to determine the application of the Act to any defendant, (2) lacking guidelines defining terms which may be used to justify exceptions to the mandatory sentencing, and (3) arbitrarily declaring a defendant to be subject to the mandatory sentences based on prior state imprisonment within 3 years while not applying to defendant's whose new offenses occur 3 years and a day after release, and not applying to defendants who were sentenced to jail rather than prison or probation, by not applying to to those released from out of state of federal prisons, have been addressed under previous subheadings in this brief.

Petitioner argues that the Act fails to accomplish its legislative purpose which was to reverse the early release of violent felony offenders and to protect the public from violent

felony offenders who prey upon the public, by applying Act to non-violent felony releasees. Petitioner is obviously referring to the first two whereas clauses of the enabling statute Ch. 97-239, at 4398, Laws of Florida. Petitioner's argument is in error for two reasons.

First, the legislative history of the statute (in this instance the enabling statute and its whereas clauses) is irrelevant in the instant case because the wording of the statute is clear and unambiguous. Streeter v. Sullivan, *supra.* (Fla. 1987)(Legislative history of statute is irrelevant where wording of statute is clear and unambiguous); Pardo v. State, *supra.*(It is a fundamental principle of statutory construction that where language of a statute is plain and unambiguous there is no occasion for judicial interpretation); Mancini v. Personalized Air Conditioning & Heating, Inc, *supra.*; and State v. Cohen, *supra.*(When the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation to alter the plain meaning).

In this instance the statute on its face clearly makes no distinction between those releasees who have prior convictions for violent felony offenses and those whose prior conviction is only a non-violent felony. The Act specifically states in pertinent part (emphasis added):

> 775.082(8)(a)1. "Prison releasee reoffender" means ***any defendant*** who commits or attempts to commit (an

enumerated felony)

> within 3 years of being released from a state correctional facility operated by the Department of Corrections or a private vendor.

Secondly, even if this Court were to resort to the legislative history of the statute, it is clear the legislature intended the Act to apply not only to violent felony offenders who reoffend within three years of their release from prison, but also to any prison releasee (regardless of whether the prior conviction was for a violent or a non violent felony) who reoffends within three years. The intent was also reflected in the the third whereas clause of the enabling statute which states (emphasis added):

> 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.

6) EQUAL PROTECTION

Petitioner's argument that the Act's classification bears no reasonable relation to the object of the legislation because the (1) intent was that the act should apply only to violent felony offenders who reoffend but as written applies to any prior felony offender who reoffends within 3 years (2) the Act draws no rational distinction between those who serve county jail time for prior acts of violence and those who serve prison time and(3) the Act draws no rational distinction between reoffenders who commit an enumerated offense within 3 years and those who reoffend 3 years and a day, have been addressed under earlier subheadings in this brief.

7) DOUBLE JEOPARDY

Petitioner can be legally sentenced as both a prison releasee reoffender and as an habitual felony offender to a single sentence encompassing both statutes.

S. 775.082(d)(1), Fla. Stat. (1997) states that , "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..."*** (emphasis added). When this section of the statute is read *in para materia* with s.775.082(c) it is clear that the trial court can impose a single sentence both as a prison releasee reoffender and as a habitual felony (if the defendant so qualifies). This is

similar to the trial court imposing a 3 year minimum mandatory sentence for the use of a firearm under s. 775.087(2) and a minimum mandatory sentence as a habitual violent felony offender. Such a sentence are proper so long as they run concurrently. Jackson v. State, 659 So.2d 1060 (Fla. 1995). In another words a single sentence is being imposed but under two separate sentencing statutes.

CONCLUSION

Based on the foregoing facts, argument, and citations of authority, Respondent respectfully requests that this Court affirm the decision of the Second District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief has been furnished by U.S. mail to Joan Fowler, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33831, this _____ day of January, 2000.

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