

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

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ORALIA BAEZ,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

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Case No. 1999 - 130

PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach, Florida, and Appellant in the Fourth District Court of Appeal. Respondent was Appellee, below.

In the brief, the parties will be referred to **as** they **appear** before this Honorable Court.

"R" = Record on Appeal.

CERTIFICATION OF TYPE FACE

Petitioner certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

STATEMENT OF THE CASE AND FACTS

Petitioner acknowledges Respondent's acceptance of his Statement of the Case and Fact.

SUMMARY OF THE ARGUMENT

Petitioner will rely on the argument **summaries** he advanced in his Brief on the Merits.

ARGUMENT

POINT I

THE PRISON RELEASEE REOFFENDER ACT, SECTION 777.082(8), FLORIDA STATUTES, DELEGATES JUDICIAL SENTENCING POWER TO THE STATE ATTORNEY, IN VIOLATION OF THE SEPARATION OF POWERS CLAUSE, ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION.

Petitioner will rely on the argument advanced in her Brief on the Merits.

POINT II

THE PRISON RELEASEE REOFFENDER **ACT** IS
UNCONSTITUTIONAL AS IT VIOLATES THE EQUAL
PROTECTION CLAUSE OF **THE** FEDERAL **AND** FLORIDA
CONSTITUTIONS.

Petitioner relies primarily on the arguments in her Brief on the Merits but makes the following additions:

As an initial matter, and contrary to the Respondent's claim, this issue was presented by motion before the trial court and is thus preserved for appellate review. (R 35-36). Respondent's argument, that the Prison Releasee Reoffender law passes the equal protection, relational relationship test, is wrong. It would be correct if either a trial judge or a prosecutor had any discretion as to whether to impose the law's requirements; however, they do not.

The law mandates both a prosecutor to seek and a trial court to impose the statutory maximum sentence upon conviction of any enumerated felony offense. The obligation on the prosecutor is clear. He must seek PRR sanctions whenever an accused meets the statutory criteria. Section 775.082(9)(d)2, Fla. Stat. (1997) require a prosecutor to report to the State Attorneys Association and explain, for public record, the reason why he or she "deviated" and did not seek PRR sanctions against an otherwise qualifying defendant. Such a requirement belies other language in the law that purportedly gives a prosecutor discretion to seek this sort of sentencing enhancement. In reality, the statute mandates the

prosecutor to seek PRR sanctions against qualifying defendants and, in turn, mandates trial courts to impose PRR sanctions when provided with documentation showing a defendant qualifies. The only time a qualifying defendant would not receive PRR sanctions is when the State would fail to provide the documents or when it incorrectly accused a defendant of qualifying. In neither case is there an exercise in discretion, by either the trial court or prosecutor, which would result in a qualifying defendant not receiving PRR sanctions.

Without the actual ability of a trial judge to exercise discretion in the imposition of a PRR sentence and without the practical ability of a prosecutor to utilize discretion in deciding to seek a PRR sanction, the statute fails the rational relationship test, as it applies only to Florida prison releasees, not those from other states or those released from jail sentences. See Williams v. State, 24 Fla. L. Weekly D2712 (Fla. 3d DCA December 8, 1999). Hence, this Court should find the Prison Releasee Reoffender law unconstitutional, as it violates the equal protection clause of both the federal and Florida constitutions.

POINT III

THE PRISON RELEASEE REOFFENDER ACT IS
UNCONSTITUTIONAL BECAUSE IT UNLAWFULLY
RESTRICTS THE RIGHT TO PLEA BARGAIN.

Petitioner will rely on the argument advanced in her Brief on
the Merits.

POINT IV

THE PRISON RELEASEE REOFFENDER ACT IS
UNCONSTITUTIONAL AS IT VIOLATES THE FEDERAL
AND FLORIDA PROHIBITION AGAINST CRUEL AND
UNUSUAL PUNISHMENT.

Petitioner will rely on the argument advanced in her Brief on
the Merits.

POINT V

THE PRISON RELEASEE REOFFENDER ACT IS
UNCONSTITUTIONAL AS IT VIOLATES THE VOID FOR
VAGUENESS DOCTRINE.

Petitioner will rely on the argument advanced in her Brief on
the Merits.

POINT VI

THE PRISON RELEASEE REOFFENDER ACT
UNCONSTITUTIONAL AS IT VIOLATES PETITIONER'S
RIGHT TO SUBSTANTIVE DUE PROCESS OF LAW.

Petitioner will rely on the argument in her Brief on the
Merits.

POINT VII

**THE PRISON RELEASEE REOFFENDER ACT VIOLATES
THE SINGLE SUBJECT RULE.**

Petitioner will rely on the argument advanced in her Brief on the Merits.

Respondent claims that this issue is not preserved because it was not raised before the lower tribunal. However, a facial challenge to a statute's constitutional validity may be raised for the first time on appeal if the error is fundamental. Trushin v. State, 425 So. 2d 1126 (Fla. 1982). To be fundamental, the error must be basic to the judicial question under review and equivalent to a denial of due process. D'Oleo-Valdez v. State, 531 So. 2d 1347 (Fla. 1988). Additionally, this issue was presented by motion to the trial court. (R 27-29).

Section 775.082(8) mandates that the court impose the maximum sentence on a defendant and the defendant must serve 100 percent of that sentence. Petitioner was sentenced to five(5) years in prison. Had she not qualified as a prison releasee reoffender, she would have been eligible for some form of early release, including gain time. Therefore, the prison releasee reoffender act implicates fundamental "liberty" due process interests. See Heqqs v. State, 2000 WL 178052 (Fla. Feb. 17, 2000); State v. Johnson, 616 So. 2d 1 (Fla. 1993). Petitioner contends the error here is fundamental because she **was** sentenced under PRR and the statute affects the central issue in the litigation namely, Petitioner's term of imprisonment. Accordingly, the issue is properly before the Court.

CONCLUSION

WHEREFORE, it is respectfully requested that the Court exercise its discretion to review the decision and resolve the issues presented in this case and find the prison release reoffender law unconstitutional and render any and all other relief that is deemed appropriate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Myra J. Fried, Assistant Attorney General, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida 3401-2299 this 3rd day of March 2000.



MAXINE WILLIAMS
Counsel for Petitioner