IN THE SUPREME COURT OF FLORIDA,

STATE OF FLORIDA, **CASE NO. 1999-27**

Petitioner, **LT Case No. 98-3949**

v.

STANLEY V. HUGGINS,

Respondent.

****
ON DISCRETIONARY REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL
****

PETITIONER'S REPLY BRIEF ON THE MERITS

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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, Petitioner 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, the State of Florida, was the prosecution in the trial court and Appellant in the Fourth District Court of Appeal. Petitioner will be referred to herein as “the Petitioner” or “the state”. Respondent, Stanley V. Huggins, was the defendant in the trial court and Appellee in the Fourth District Court of Appeal. He will be referred to as “the Respondent”.

The Respondent’s Answer Brief will be referred to as “AB” followed by the applicable page number(s).

STATEMENT OF THE CASE AND FACTS

Respondent relies on its Statement of the Case and Facts as contained in his Initial Brief.

SUMMARY ARGUMENT

The prison releasee reoffender act applies to burglary of a dwelling whether or not the dwelling is occupied at the time of the offense. The lower court's interpretation that the act does not apply to burglary of a dwelling which is unoccupied is erroneous. The decision of the lower court is contrary to the plain language of the act. Furthermore it creates a distinction between burglary of an occupied dwelling and burglary of an unoccupied dwelling, although it is clear that such a distinction has no legal significance and was not intended by the legislature.

The Respondent's argument that the rule of lenity supports the decision of the lower court is misplaced; the language of the Act is plain and it should not be subject to judicial interpretation. The Respondent's argument that an in pari materia reading of the statute eliminates burglary of a dwelling which is unoccupied as a qualifying offense is also inapplicable; there are additional qualifying offenses under the Act which do not necessarily involve the risk of harm to other persons.

ARGUMENT

THE PRISON RELEASEE REOFFENDER ACT APPLIES TO BURGLARY OF A DWELLING WHETHER OR NOT THE DWELLING IS OCCUPIED AT THE TIME OF THE OFFENSE

The Prison Releasee Reoffender Act (the Act) states in pertinent part:

> (8)(a)1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:
>
> * * *
>
> q. Burglary of an occupied structure or dwelling . . .
>
> * * *
>
> within 3 years of being released from a state correctional facility operated by the Department of Corrections or a private sector.

Section 775.082(8)(a)1q, Florida Statutes (1997).

The Act clearly applies to defendants who have committed burglary of a dwelling, whether or not the dwelling is occupied. However, in the instant case, the lower court has made a contrary conclusion and has held that the Act does not apply to defendants who commit burglary of a dwelling when the dwelling is not occupied at the time of the offense. State v. Huggins, 744 So.2d 1215 (Fla. 4th DCA 1999).

In his Answer Brief, the Respondent argues that the lower court's interpretation of the Act is correct because the Act is susceptible to more than one meaning, and the law of lenity

requires that it be construed in favor of the accused (AB p. 4-8). However, this argument is not well taken in the instant case; the Act is unambiguous and should not be subject to judicial interpretation which alters its plain language. State v. Jette, 626 So.2d 691 (Fla. 1993); T.R. V. State, 677 So.2d 270 (Fla. 1996).

The Respondent further argues that each qualifying offense of the Act involves risk of harm to persons and since burglary of an unoccupied dwelling does not involve other people, that offense would be excluded under the pari materia theory of statutory construction (AB p. 8-9). However, this argument is not persuasive; there are other qualifying offenses under the Act which do not directly involve risk to other persons.

Arson is one such offense. Section 775.082(8)(a)1h, Florida Statutes (1997). This crime is defined as follows:

> **806.01 Arson.-**
>
> (1) Any person who willfully and unlawfully, or while in the commission of a felony, by fire or explosion, damages or causes to be damaged:
>
> (a) Any dwelling, **whether occupied or not**, or its contents;
>
> (b) Any structure, or contents thereof, where persons are normally present, such as jails, prisons, or detention centers; hospitals, nursing homes, or other health care facilities; department stores, office buildings, business establishments, churches, or educational institutions during normal hours of occupancy; or other similar structures; or
>
> (c) Any other structure that he or she knew or had reasonable grounds to believe was occupied by a human being,

> is guilty of arson in the first degree . . .
>
> (2) Any person who willfully and unlawfully, or while in the commission of any felony, by fire or explosion, damages or causes to be damaged any structure, whether the property of himself or another, under any circumstances not referred to in subsection (1), is guilty of arson in the second degree . . .

Sections 806.01(1) and (2), Florida Statutes (1997) (emphasis added). Clearly, arson does not require that the particular dwelling be occupied at the time of the crime. Likewise arson in the second degree does not by definition involve risk to persons, but only to structures.

Furthermore, the qualifying offense in section 775.082(8)(a)1n, Florida Statutes (1997), unlawful throwing, placing, or discharging of a destructive device or bomb, may not always involve other persons. Section 790.161(1), Florida Statutes (1997). It is only when this offense is committed with intent to do bodily harm (or disrupt government or commerce) is it then elevated from a third to a second degree felony. Section 790.161(2), Florida Statutes (1997). However, the crime itself does not, by definition, necessarily involve other persons.

Additionally, felony violations of section 790.07, Florida Statutes (1997), another qualifying offense under the Act, section 775.082(8)(a)1r, Florida Statutes (1997), do not necessarily involve risk to other persons.

Since the statute has three exceptions (beyond burglary of a

dwelling) to the Respondent's contention that the qualifying offenses must involve other persons, that argument must fail.

The Respondent also argues that the state's assertion that there is no legal distinction between burglary of a dwelling which is occupied and one which is unoccupied is flawed because the burglary statute has been amended (AB p. 10-11). However the only amendment upon which the Respondent appears to rely is the division of burglary of a dwelling into separate subsections (AB p.10).

This argument is not compelling. In fact, it could be argued with more persuasion that this division clarifies the Legislature's intent that burglary of a dwelling shall be punished equally, whether or not the dwelling is occupied at the time of the offense. Thus distinguishing it from burglary of a structure, where occupancy is a critical factor in defining the crime.

The state's position is fully supported by this Court's decision in Perkins v. State, 682 So.2d 1083 (Fla. 1996). In Perkins, this Court conducted a thorough analysis of the burglary of a dwelling statute.[1] In that case, the defendant claimed that he should not have been convicted of burglary of a dwelling, a second degree felony, since the house he burglarized was unoccupied; he argued that he should have been convicted of burglary of a structure, a third degree felony. Id. At 1083-1084.

[1] This Court analyzed the 1995 version of the statute which, like the 1997 version, divides burglary of a dwelling into subsections for occupied and unoccupied.

This Court rejected that argument and held that:

> We find the legislative definition of "dwelling" under section 810.011(2) is both clear and unambiguous . . . It is apparent here that the legislature has extended broad protection to buildings or conveyances of any kind that are designed for human habitation. Hence, an **empty house in a neighborhood is extended the same protection as one presently occupied.**

Id. At 1085 (emphasis added). Consequently, there is no legal distinction between burglary of a dwelling which is currently occupied and one which is empty.

In support of his position that there is somehow a distinction between burglary of an occupied dwelling and burglary of an unoccupied dwelling, the Respondent cites C.R.C. v. Portesy, 731 So.2d 777 (Fla. 2d DCA 1999)(AB p. 9-10). However, this case is completely distinguishable from the instant one.

C.R.C. involved the interpretation of a particular phrase on a Risk Assessment Instrument ("RAI"), a form used to determine a juvenile offender's placement in secure detention. Id. At 771. The RAI called for an assessment of ten points for "burglary of an occupied residential structure"; the juvenile in question burglarized a dwelling which was not occupied. Id. The court held that the ten points should not have been assessed since the word "occupied" unambiguously modified the words "residential structure." Id. At 772.

The Respondent could possibly find some support from C.R.C. if

the Legislature stated the qualifying offense under the Act was "burglary of an occupied dwelling", but they did not. The applicable qualifying offense is burglary of an occupied structure or burglary of a dwelling. Section 775.082(8)(a)1q, Florida Statutes (1997). In C.R.C., it was clear that the drafters of the RAI[2] intended, at least for the limited purpose of assessing juvenile risk, that there should be a distinction between burglary of an occupied dwelling and burglary of an unoccupied dwelling, even though the Legislature intended no such distinction.

Significantly, the same court which decided C.R.C., the Second District Court of Appeal, has subsequently and repeatedly held that the Act applies to burglary of a dwelling whether or not the dwelling is occupied at the time of the offense. State v. White, 736 So.2d 1231 (Fla. 2d DCA 1999); State v. Chamberlain, 24 Fla. L. Weekly D2514 (Fla. 2d DCA Nov. 3, 1999); Medina v. State, 25 Fla. L. Weekly D220 (Fla. 2d DCA Jan. 21, 2000); Hunter v. State, 25 Fla. L. Weekly D387 (Fla. 2d DCA Feb.11, 2000). This is clear indication that the Second District did not intend to expand their decision in C.R.C. beyond the interpretation of the RAI form.

In Medina, the court rejected the same argument which the Respondent is positing here, that the term "occupied" modifies both structure and dwelling, and held that:

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[2] Presumably the Department of Juvenile Justice. See S.W. v. Woolsey, 673 So.2d 152 (Fla. 1st DCA 1996).

> . . . By amending the statutory definition of "dwelling" to include any structure or conveyance "designed to be occupied by people," the legislature gave equal protection to all dwellings regardless of their occupancy . . . Since occupancy is no longer an element of the offense of burglary of a dwelling, the jury is no longer asked to determine whether a dwelling is occupied or unoccupied when it determines whether burglary of a dwelling occurred . . . We fail to see how the occupancy of a dwelling can be an element of the crime for purposes of sentencing when it is not an element of the crime for purposes of conviction. Therefore, we hold that burglary of a dwelling, whether occupied or not, is a qualifying offense under the Act.

Id. at D221 (internal citations omitted).

This Court should resolve the conflicting interpretation of the Act in favor of the Second District over the Fourth District. The interpretation of the Second District is in accordance with the plain language of the Act and correctly recognizes that there is no legal distinction between burglary of a dwelling which is occupied and burglary of a dwelling which is unoccupied.

In addition to the matters argued above, the state would rely on the argument contained in its Initial Brief. The decision of the court in State v. Huggins, 744 So.2d 1215 (Fla. 4th DCA 1999) should be reversed.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, and in its Initial Brief, the Petitioner respectfully requests this honorable Court to reverse the decision of the lower court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of hereof has been furnished by U.S. Mail or Courier to: Karen E. Ehrlich, Assistant Public Defender, 421 3rd Street, 6th Floor, West Palm Beach, FL 33401 on March 26, 2001.

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