

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

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BY SJ

PHILLIP FREDERICK TAYLOR,

Appellant,

v.

Case No. SC00-1046
1st DCA Case No. 1D98-1339

STATE OF FLORIDA,

Appellee.
_____/

PETITIONER'S BRIEF ON JURISDICTION

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IN THE SUPREME COURT OF FLORIDA

PHILLIP FREDERICK TAYLOR,

Appellant,

v.

Case No.

1st DCA Case No. 1D98-1339

STATE OF FLORIDA,

Appellee.

_____ /

I. PRELIMINARY STATEMENT

Pursuant to the Florida Supreme Court's Administrative Order of July 13, 1997, this brief has been printed in Courier New (12 point), not proportionally spaced.

II. STATEMENT OF THE CASE AND FACTS

This is an appeal from the decision of the First District Court of Appeal. Taylor v. State, No. 1D98-1339 (Fla.1st DCA April 17, 2000). The opinion rejects petitioner's claim that sentencing him as both a prison releasee reoffender and an habitual felony offender violates double jeopardy, acknowledging, however, conflict with Adams v. State, 750 So.2d 659 (Fla. 4th DCA 1999). The opinion also rejects petitioner's various claims that the Prison Releasee Reoffender Punishment Act is unconstitutional, citing, *inter alia*, Woods v. State, 740 So.2d 20 (Fla. 1st DCA 1999), *rev. granted*, 740 So.2d 529 (Fla. 1999), and Turner v. State, 745 So.2d 351 (Fla. 1st DCA 1999), *rev. granted*, No. 96,631 (Fla. Feb. 3, 2000).

III. SUMMARY OF ARGUMENT

Because the decision expressly conflicts with Adams v. State, 750 So.2d 659 (Fla. 4th DCA 1999), this Court should accept jurisdiction. Additionally, under Jollie v. State, 405 So.2d 418 (Fla. 1981), the citations by the district court to cases pending a decision in this court creates conflict jurisdiction under Article V, §3(b)(3), Florida Constitution, and Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure. Since this Court has accepted Woods and Turner for review, it should also accept this case for review in order to promote uniformity of decisions and to serve the interests of justice.

IV. ARGUMENT

ISSUE

THIS COURT SHOULD GRANT REVIEW OF TAYLOR V. STATE, SUPRA, BECAUSE THE DECISION EXPRESSLY CONFLICTS WITH ADAMS V. STATE, 750 So.2d 659 (Fla. 4th DCA 1999), AND THE DECISION PRESENTS THE SAME ISSUES AS PRESENTED IN WOODS V. STATE, 740 So.2d 20 (Fla. 1st DCA 1999), rev. granted, 740 So.2d 529 (Fla. 1999), and TURNER V. STATE, 745 So.2d 351 (Fla. 1st DCA 1999), rev. granted, No. 96,631 (Fla. Feb. 3, 2000).

In Adams v. State, supra, the Fourth District held that sentencing a defendant as both an habitual offender and a prison releasee reoffender violates the prohibition against multiple punishments for the same offense contained in both the federal and Florida constitutions. U.S. Const. Amend. V; Fla. Const. Art. I, §9; Ex Parte Lange, 18 Wall. 163, 85 U.S. 163, 21 L.Ed. 872 (1873). In Taylor v. State, supra, the First District rejected an identical claim, acknowledging conflict with Adams. This Court should accept jurisdiction to resolve this inter-district conflict particularly since the imposition of such double sentencing results in a much harsher sentence than would otherwise be allowed under statute. See Adams v. State, supra at 660.

This court should also accept jurisdiction under the principles of Jollie v. State, supra. In Woods v. State, supra, the First District certified the following as a question of great public importance:

DOES THE PRISON RELEASEE REOFFENDER PUNISHMENT
ACT CODIFIED AS SECTION 775.082(8), FLORIDA
STATUTES (1997), VIOLATE THE SEPARATION OF
POWERS CLAUSE OF THE FLORIDA CONSTITUTION?

Turner v. State, supra, certified the same question. This Court has accepted jurisdiction in each case. In Taylor v. State, supra, the First District acknowledged that Taylor raised the identical issue. Since Taylor presents an identical issue to those raised in Turner and Woods, both of which are pending in this Court, in order to promote uniformity of decisions, this Court should also grant review of Taylor.

V. CONCLUSION

Based on the foregoing argument, reasoning and authority, petitioner requests that this Court exercise its discretion to accept jurisdiction of this case and order briefing on the merits.

VI. CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing has been furnished to **CHARMAINE MILLSAPS**, Assistant Attorney General, by hand delivery to The Capitol, Plaza Level, Tallahassee, Florida 32399-1050, and a copy has been mailed to appellant, **PHILLIP FREDERICK TAYLOR**, on this day, May 12, 2000.

Respectfully submitted,

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IN THE SUPREME COURT OF FLORIDA

PHILLIP FREDERICK TAYLOR,

Appellant,

v.

Case No.

STATE OF FLORIDA,

Appellee.

_____/

APPENDIX TO PETITIONER'S BRIEF ON JURISDICTION

Taylor v. State, No. 1D98-1339 (Fla.1st DCA April 17, 2000)

IN THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT, STATE OF FLORIDA

PHILLIP FREDERICK TAYLOR,
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED.

v.

CASE NO. **1D98-1339**

STATE OF FLORIDA,
Appellee.

Opinion filed April 17, 2000.

An appeal from the Circuit Court for Duval County.
William A. Wilkes, Judge.

Nancy A. Daniels, Public Defender; **Glenna** Joyce Reeves, Assistant Public
Defender, Tallahassee, for Appellant.

Robert A. **Butterworth**, Attorney General; Charmaine **M.** Millsaps, Assistant
Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Appellant seeks review of a sentence imposed following his conviction of
robbery with a weapon. We affirm.

First, appellant claims that sentencing him as ~~both a prison~~ releasee

APR 17 2000
PUBLIC DEFENDER
2nd JUDICIAL CIRCUIT

reoffender and an habitual felony offender for the same offense violated the constitution & prohibition against double jeopardy. We recently rejected this argument in Smith v. State, Case No. **1D98-656** (Fla. 1st DCA Mar. **13, 2000**), but certified conflict with Adams v. State, 24 Fla. L. Weekly D 2394 (**Fla.** 4th DCA Oct. 20, 1999).

Second, appellant claims that the Prison **Releasee** Reoffender Punishment Act, codified as section **775.082(8)**, Florida Statutes (**1997**), violates the separation of powers clause of the Florida Constitution. We rejected this claim in Woods v. State, 740 So. 2d 20 (Fla. 1st DCA) (certifying a question of great public importance), review granted, 740 So. 2d 529 (Fla. 1999).

Third, appellant claims that application of the Prison **Releasee** Reoffender Punishment Act to him constitutes an **ex post facto** violation, even though he committed his current offense after the effective date of the Act. We rejected this argument in Chambers v. State, 25 Fla. L. Weekly 0387 (Fla. 1st DCA Feb. 11, 2000).

Fourth, appellant claims that the Prison **Releasee** Reoffender Punishment Act violates the equal protection clauses of the state and federal constitutions. We rejected this argument in Woo & Chambers and Turner v. State, 745 So. 2d 351 (Fla. 1st DCA **1999**), review granted, No. 96,631 (Fla. Feb. 3, 2000).

Finally, appellant claims that the Prison ~~Releasee~~ **Reoffender** Punishment Act is unconstitutionally vague. We rejected this argument in Woods, Chambers and Turner.

For the reasons set forth in the cases cited above, appellant's sentence is affirmed.

AFFIRMED.

MINER, WEBSTER and LAWRENCE, JJ.; CONCUR.