IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-708

STATE OF FLORIDA,

Petitioner,

vs.

FREDDRICK BROOKS,

Respondent.

****

PETITIONER'S REPLY BRIEF ON THE MERITS
On review from the
District Court of Appeal, Fourth District

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CERTIFICATE OF TYPE FACE

In accordance with the Florida Supreme Court Administrative Order issued July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel for Petitioner hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that has 10 characters per inch.

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AUGUST A. BONAVITA

TABLE OF AUTHORITIES

STATE CASES

STATUTES

STATEMENT OF THE CASE AND FACTS

Petitioner accepts the Respondent's Statement of Facts set forth in his Answer Brief and further relies on the Statement of Facts contained in Petitioner's initial brief on the merits.

SUMMARY OF THE ARGUMENT

POINT I. This Court should accept review because Respondent was properly sentenced as a prison releasee reoffender. The trial court's failure to orally pronounce the fifteen-year component of the prison releasee reoffender sentence, while including same in its written order, is not fatal to this Court's exercise of jurisdiction. The trial court's failure to orally pronounce the fifteen-year term is simply a judicial oversight, since, unlike a guidelines or habitual offender sentence, a prison releasee reoffender one is mandatory. Further, there is nothing in the record which suggests that the trial court purposely withheld imposition of said sentence. Finally, the lower court expressly certified conflict with the second district court of appeals' decision in Grant[1].

POINT II. It is respectfully submitted that this, as well as the Adams[2] and Gordon[3] cases were incorrectly decided and that Appellant's sentence is proper and does not violate the double jeopardy and due process clauses contained in both the State and United States constitutions.

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[1]Grant v. State, 745 So. 2d 519 (Fla 2d DCA 1999), rev. granted, No. SC99-164.

[2]Adams v. State, 24 Fla. L. Weekly D2394 (4th DCA October 20, 1999).

[3]Gordon v. State, 24 Fla. L. Weekly D2342 (4th DCA October 13, 1999).

ARGUMENT

POINT I

THIS COURT SHOULD ACCEPT REVIEW BECAUSE RESPONDENT WAS PROPERLY SENTENCED AS A PRISON RELEASEE REOFFENDER.

This court should accept review because Respondent was properly sentenced as a prison releasee reoffender. Respondent asserts that this Court should not decide this very important issue which the was certified by the lower court to be in conflict with the second district's decision in Grant, because the trial court failed to orally pronounce the mandatory fifteen-year sentence (AB 3-4). In support of this argument, Respondent suggests that "[p]erhaps the court accepted the defense's argument that the 15 years were not mandatory (T 235); for whatever reason, it did not impose it" (AB 4). Petitioner submits that, not only is this argument pure supposition, it is unsupported by the record.

After denying Respondent's motion to declare the prison releasee reoffender statute unconstitutional, (SR; T 231-34) the trial court found Respondent qualified as a prison release reoffender (T 234). Counsel for Respondent then argued that the trial court had discretion in determining what, if any, sentence he could lawfully impose on Respondent as a prison releasee reoffender (T 235-7). The prosecutor responded that the language of the statute clearly indicates that once Respondent was

designated a prison releasee reoffender, the trial must sentence him to a full fifteen-year term of incarceration (T 237). Respondent replied as follows:

> Let me speak briefly. I was just addressing the H.O. status of Mr. Brooks, but as to the recent prison releasee statute, [the prosecutor] indicates he must be sentenced. I've been here for almost 20 years and often times the legislature says must and the appellate court means well, must doesn't necessarily mean have to. Sometimes it means the legislature is becoming more and more active in sentencing defendants. And I would indicate to you that you still have the inherent authority as in the judicial branch of government to sentence Mr. Brooks any way you feel deemed [sic] necessary

(T 238).

Almost immediately thereafter and without expressly responding to this argument, the trial court reiterated its finding that "release [sic] releasee re-offender is appropriate in this case" (T 239). Further, the prison releasee reoffender statute under which Respondent was sentenced, permitted a deviation from its mandatory sentencing scheme only upon a finding of the following:

> 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, unless any of the following circumstances exist:
>
> a. The prosecuting attorney does not have sufficient evidence to prove the highest charge available;

> b. The testimony of a material witness cannot be obtained;
>
> c. The victim does not want the offender to receive the mandatory prison sentence and provides a written statement to that effect; or
>
> d. Other extenuating circumstances exist which preclude the just prosecution of the offender.

Section 775.082 (8)(d)1., Fla. Stat. (1997)[4] .

There was no evidence presented which supported, nor did the trial court expressly find the existence of one of these circumstances which would permit a deviation from the mandatory fifteen-year sentence. Therefore, the trial court's failure to orally pronounce the said sentence cannot be attributed to any one of the circumstances enumerated in the statute. In addition, that the trial court did not expressly rule, or comment on Respondent's argument, further supports the conclusion that its failure to orally pronounce the mandatory fifteen-year sentence is no more than a mere judicial oversight and an implicit rejection of Respondent's counsel's argument that the trial court can circumvent the clear mandate of the sentencing statute simply because the trial court has the "inherent authority" to do so.

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[4]The Legislature subsequently changed this provision from the statute by giving the *state attorney* the option of foregoing a sentence under this provision where "extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection...." *See*, Ch. 99-188 § 2, Laws of Florida.

Indeed, as Respondent correctly states in his second argument, "Legislatures, not courts, prescribe the scope of punishment" (AB 6). Finally, Petitioner submits that since the lower court certified conflict with Grant, this Court should accept jurisdiction to resolve this very important issue.

POINT II

DOES CLASSIFYING A DEFENDANT AS BOTH A PRISON RELEASEE REOFFENDER AND A HABITUAL FELONY OFFENDER VIOLATE DOUBLE JEOPARDY?

Petitioner rests on its argument contained in its initial brief on the merits.

CONCLUSION

Based on the foregoing arguments and authorities cited therein, the State of Florida respectfully requests this Honorable Court to affirm the conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Petitioner’s Reply Brief on the Merits" has been furnished to: ALLEN J. DeWEESE, Assistant Public Defender, Fifteenth Judicial Circuit of Florida, The Criminal Justice Building, 421 Third Street, 6th Floor, West Palm Beach, Fl 33401 on this ___ day of August, 2000.

_____
Of Counsel