IN THE SUPREME COURT OF FLORIDA

ALVIN DEREAK CHAMBERS,

Petitioner,

v. Case No. **SC00-1153**

STATE OF FLORIDA,

Respondent.
_____/

REPLY BRIEF OF PETITIONER ON THE MERITS

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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.

The brief of respondent, the State of Florida, will be referred to as "AB." Other references will be designated as set forth initially.

ARGUMENT

ISSUE I

THE TRIAL COURT ERRED IN SENTENCING PETITIONER AS BOTH A PRISON RELEASEE REOFFENDER AND A HABITUAL VIOLENT FELONY OFFENDER.

Respondent erroneously contends that a double jeopardy claim can only be made when "more punishment is being imposed." (AB-6, 8-9).[1] Double jeopardy protects against the actual imposition of two punishments for the same offense. Witte v. United States, 515 U.S. 389 (1995). If the legislature did not clearly intend such double punishments, double jeopardy is violated.

Thus, the issue presented is whether the legislature intended that dual punishment be imposed. This issue, in turn, turns on an interpretation of subsection 8(c) of §775.082, Florida Statutes (1997), which provides:

> Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084 or any other provision of law.

---

[1] The imposition of the PRR sentence and HVFO sentence does, in fact, however, result in a more severe sentence than could be imposed under either statute singly. As a PRR, petitioner would have to serve 100% of his five-year sentence with no gain time. As a HVFO, petitioner could be released with credits after serving 85% of the ten-year sentence, i.e., 8.50 years. By imposing the PRR and HVFO in tandem, petitioner's earliest release would be 9.25 years: 5 years as PRR plus 85% of the remaining five-year sentence (4.5 years). See Adams v. State, 750 So. 2d 659 (Fla. 4th DCA 1999).

At best, this subsection is ambiguous and thus, under the rule of lenity, the construction favorable to petitioner must be adopted.

Both the Fourth District and the Fifth District have construed this subsection to mean that alternative sentences, not sentences in tandem, are authorized. Adams v. State, 750 So. 2d 659 (Fla. 4th DCA 1999); Lewis v. State, 751 So. 2d 106 (Fla. 5th DCA 2000). Contra, Smith v. State, 754 So. 2d 100 (Fla. 1st DCA 2000); Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999), rev. granted, No. SC99-164 (Fla. April 12, 2000); Alfonso v. State, 761 So. 2d 1231 (Fla. 3d DCA 2000). As Adams notes:

> [T]his section overrides the mandatory duty to sentence a qualifying defendant as a prison releasee reoffender under section 775.082(8)(d), where the court elects to hand down a harsher sentence as a habitual offender.

Id. at 661. The statute allows the state to seek whichever sentence may imprison the defendant longer, but does not provide for dual sentences. This construction is consistent with legislative intent which established the prison releasee reoffender act as an alternative category for the sentencing of repeat offenders.[2] None of the staff analyses indicate that dual sentences were contemplated. Rather, they strongly infer the statute was intended as an alternative. The Senate Staff

[2] See, e.g., Hearings on CS for HB 1371 before House Criminal Justice Appropriate Committee, March 27, 1997 (Rep. Martinez); House debate, April 11, 1997.

Analysis and Economic Impact Statement for CS/SB 2362, dated April 10, 1997, notes that:

> Even if the defendant meets the criteria for a prison releasee reoffender, the state attorney can seek to have the defendant sentenced under the sentencing guidelines or if he meets relevant criteria, habitualized as an habitual felony offender, habitual violent felony offender or violent career criminal. A distinction between the prison releasee provision and the current habitualization provisions is that, when the state attorney does pursue sentencing of the defendant as a prison releasee reoffender and proves that the defendant is a prison releasee reoffender, the court must impose the appropriate mandatory minimum term of imprisonment.
>
> The CS further provides that a person sentenced as a prison releasee reoffender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. The prison releasee reoffender must serve 100 percent of the court-imposed sentence rather than the 85 percent as current law provides. The court is not prevented from imposing a greater sentence of incarceration pursuant to any other provision of law.

Similarly, the Staff Analysis from the House of Representatives Committee on Crime and Punishment for CS/HB 1371, dated March 24, 1997, notes:

> 1. <u>CS/HB 1371 Compared to the Habitual Offender Statute</u>
>
> While "habitual offenders" committing new (non-specific) felonies within five years would fall within the scope of the habitual offender statute, this bill is distinguishable from the habitual offender

> statute in its certainty of punishment, and its mandatory nature. The habitual offender statute basically doubles the statutory maximum periods of incarceration under s. 775.082 as a potential maximum sentence for the offender. On the other hand, the minimum mandatory prison terms are lower under the habitual violent felony offender statute, than those provided under the bill. In addition, a court may decline to impose a habitual offender or habitual violent felony offender sentence.
>
> Unlike the habitual offender statute, the application of this bill is not based a certain number of prior convictions, nor a certain type of prior offense. Instead, upon proof by the state attorney, that a defendant committed a qualifying offense within 5 years of release from prison, the imposition of sentence under this bill is mandatory and certain. The court would have no discretion to decline the imposition of the prescribed sentence.

Thus, sentencing as both a prison releasee reoffender and an habitual offender was not contemplated.

Although State v. Cotton, 25 Fla. L. Weekly S689 (Fla. September 14, 2000), refers to the prison releasee reoffender statute as a "mandatory minimum" statute, in actuality, the statute more accurately can be described as a mandatory sentencing statute. In discussing Cotton, the Fourth District indicated:

> The court noted that the act creates a sentencing floor, as a mandatory sentencing scheme. What we said in Adams is consistent with that statement. The act requires that the court sentence a defendant as a prison releasee reoffender unless a harsher sentence can be imposed under the habitual offender

> statute or other provision of law. Thus, the prison releasee reoffender acts as the mandatory minimum sentence, but it does not mean that appellant can receive two sentences under two separate statutes for the same crime.

Walker v. State, 765 So. 2d 939, 940 (Fla. 4th DCA 2000). This interpretation gives full effect to subsection 8(c) and is consistent with legislative intent.

Petitioner maintains therefore that the imposition of both the PRR statutory provisions and the HVFO statutory provisions was not intended by the legislature. Thus, imposition of this multiple punishments violates double jeopardy. Petitioner's sentence should be vacated and the cause remanded for resentencing under the PRR statutory provisions or the HVFO statutory provisions.

CONCLUSION

For the reasons stated, the District Court's opinion affirming petitioner's sentence should be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing has been furnished to **CHARMAINE M. MILLSAPS**, Assistant Attorney General, by hand delivery to The Capitol, Plaza Level, Tallahassee, Florida 32399-1050, and a copy has been mailed to Petitioner, **ALVIN DEREAK CHAMBERS**, **A-729559**, **Madison Correctional Institution**, **Post Office Box 692**, **Madison**, **FL 32341-0692**, on this day, June 28, 2001.

Respectfully submitted,

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_____

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APPENDIX TO REPLY BRIEF OF PETITIONER ON THE MERITS

APPENDIX	DOCUMENT
A	Senate Staff Analysis and Economic Impact Statement for bill CS/SB 2362, dated April 10, 1997
B	House of Representatives Committee on Crime and Punishment Bill Research and Economic Impact Statement on CS/SB 2362, dated March 24, 1997