

IN THE SUPREME COURT OF FLORIDA

WILLIAM D. SIMON, :
 :
 Petitioner, :
 :
 vs. :
 :
 STATE OF FLORIDA, :
 :
 Respondent. :

Case No. 2000-118

FILED
DEBBIE CAUSSEFAUX
JAN 13 2000
CLERK, SUPREME COURT
BY _____

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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STATEMENT REGARDING TYPE

Petitioner's brief is prepared in Courier 12 point.

STATEMENT OF THE CASE AND FACTS

The State Attorney for the Sixth Judicial Circuit, Pasco County, Florida filed separate informations charging petitioner William Simon a/k/a William Loyd with: grand theft [95-2378CFAWS] (R10-11); possession of a weapon within 1,000 feet of a school [95-3320CFAWS] (R36-7); grand theft [96-0144CFAWS] (R61-2); grand theft [96-0165CFAWS] (R67-8); burglary and grand theft [96-0166CFAWS] (R69-70); burglary and grand theft [96-0437CFAWS] (R71-2); and two counts of burglary and a grand theft [96-0497CFAWS] (R93-4) .

Petitioner entered a no contest plea to all charges, (R128-9) was adjudicated and sentenced as a Youthful Offender to two years incarceration followed by four years probation on each count with all sentences to run concurrently. (R121-7;130-164;168-174;178-203;209-11)

Subsequently, an affidavit was filed alleging the petitioner had violated the conditions of his probation by committing a new offense. (R216) An information was filed charging petitioner with attempted strong-arm robbery [98-1655CFAWS] (R265-6) Trial on that charge **was** held on February 10, 1999, before the Honorable William Sestak. The jury listened to the testimony of the witnesses, saw the evidence and heard the argument of counsel and the instructions of the court. The jury deliberated and found petitioner guilty as charged. (R377)

Thereafter on February 19, 1999, petitioner was found to be in violation of his probation and was sentenced to 33.25 months incarceration on each violation, with all sentences to run concurrently. Petitioner was also adjudicated guilty of the attempted robbery and sentenced as a prison releasee reoffender to five years which **was** to run concurrent to his probation violation sentences.

Petitioner filed a notice of appeal to the District Court of Appeal, Second District in which he raised the issue of the unconstitutionality of the prison releasee reoffender statute. In its opinion of December 29, 1999, affirming petitioner's conviction and sentence, the court cited the earlier case of Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999) which specifically found the prison releasee reoffender statute to be constitutionality valid. [See Appendix] Petitioner filed his notice to invoke the discretionary jurisdiction of this court and now files this jurisdictional brief.

SUMMARY OF THE ARGUMENT

This court has discretion to review petitioner's case pursuant to Fla. R. App. Pro. 9.030 (2) (A) (i) as being a decision of a district court of appeal that expressly declares valid a state statute.

ARGUMENT

ISSUE

THIS COURT HAS DISCRETIONARY JURIS-
DICTION TO REVIEW PETITIONER'S CASE,
AS THE DISTRICT COURT'S OPINION
CITED TO A PRIOR OPINION OF THE
COURT EXPRESSLY DECLARING VALID THE
PRISON RELEASEE REOFFENDER ACT.

Petitioner's **case** involves the legal issue of whether the prison releasee reoffender act is unconstitutional. In Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999), the District Court of Appeal, Second District, expressly held that the prison releasee reoffender act was constitutionally valid. Petitioner raised the identical issue in his appeal to the Second District and the court's opinion affirming his judgment and sentence cited to the Grant case.

In Jollie v. State, 405 So. 2d 418 (Fla. 1981) this court held that a district court of appeal's per curiam opinion which cited as controlling authority a decision that constituted prima facie express conflict would allow this court to exercise its discretionary jurisdiction. The same rationale would equally apply where the cited case expressly declares a state statute to be valid, which is an additional basis for discretionary review under 9.030 Fla. R. App. Pro. Furthermore, the Second District's opinion in Grant is currently pending review before this court.

CONCLUSION

Petitioner asks this court to exercise its discretionary review in this case.

APPENDIX

PAGE NO.

1. The opinion of the Second District Court
filed on December 29, 1999.

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

WILLIAM D. SIMON,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)

Case No. 99-01176

Opinion filed December 29, 1999.

Appeal from the Circuit Court for Pasco
County; William Sestak, Acting Circuit
Judge.

James Marion Moot-man, Public
Defender, and **Allyn** M. Giambalvo,
Assistant Public Defender, Bar-tow, for
Appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, and Stephen D.
Ake, Assistant Attorney General,
Tampa, for **Appellee**.

Received By

DEC 29 1999

Appellate Division
Public Defenders Office

PER CURIAM.

Affirmed. See Grant v. State, 24 Fla. L. Weekly 02627 (Fla. 2d DCA

Nov. 24, 1999).

PARKER, A.C.J., and WHATLEY and STRINGER, JJ., Concur.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Stephen D. Ake, Suite
700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this
11 day of January, 2000.

Respectfully submitted,

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