IN THE SUPREME COURT OF FLORIDA

STEVEN MCGREGOR,

Petitioner,

CASE NO. SC00-1215

v.

STATE OF FLORIDA,

Respondent.
_____/

RESPONDENT'S ANSWER BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JAMES W. ROGERS
TALLAHASSEE BUREAU CHIEF,
CRIMINAL APPEALS
FLORIDA BAR NO. 325791

CHARMAINE M. MILLSAPS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0989134

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CITATIONS

FLORIDA CONSTITUTIONAL PROVISIONS & STATUTES

OTHER

PRELIMINARY STATEMENT

Petitioner, STEVEN MCGREGOR, Appellant in the First District and the defendant in the trial court, will be referred to as Petitioner or by proper name. Respondent, the State of Florida, the Appellee in the First District, will be referred to as Respondent or the State. Pursuant to Rule 9.210(b), Fla. R. App. P. (1999), this brief will refer to a volume number followed by the appropriate page number. "IB" will designate Petitioner's initial brief. All double-underlined emphasis is supplied.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

The State substitutes the following statement of the case and facts:

Petitioner appealed his sentence in the First District. The First District's opinion in McGregor v. State, 25 Fla. L. Weekly D1354 (Fla. 1st DCA June 1, 2000), in its entirely was:

PER CURIAM.

Affirmed. We certify the question of great public importance formerly certified in Davenport v. State, 2000 WL 356345 (Fla. 1st DCA Apr.7, 2000), and Woods v. State, 740 So.2d 20, 24 Fla. L. Weekly D831 (Fla. 1st DCA March 26, 1999):

> 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?

The First District did not certify the single subject challenge petitioner is now raising.

SUMMARY OF ARGUMENT

Petitioner is attempting to raise a single subject challenge to the Prison Releasee Reoffender Punishment Act. This Court should decline to address petitioner's challenge. First, the issue certified as a question of great public importance by the First District has already been decided by this Court. State v. Cotton, 25 Fla. L. Weekly S463 (Fla. June 15, 2000)(holding the prison releasee reoffender statute does not violate separation of powers principles). Furthermore, there is no conflict among the district courts regarding the single subject challenge. All three district courts that have decided the issue have held that the Act does not violate the single subject provision. This Court should decline to address petitioner's challenge.

Petitioner argues that the Prison Releasee Reoffender Punishment Act violates the single subject provision of the Florida Constitution. The State respectfully disagrees. There is a reasonable and rational relationship among the sections of the Act. All the sections of the Act are all designed to control either prison releasees who commit new offenses upon release or probationers who violate the terms of their probation. Section two defines who is a prison releasee reoffender and establishes the mandatory penalties for these reoffenders; section three provides for warning upon release that a releasee may be subject to prison releasee reoffender status if he commits another felony within three years of being released; section four requires that a releasee whose release is revoked and sent back to prison shall

forfeit prison credits; section five expands the power to arrest probationers or those on community control who commit violations from probation officers to law enforcement officers; section six makes no change to the existing statute and is part of the legislation for purposes of incorporation. The underlying theme of the legislation is to control those who commit offense after being released from prison or while on probation. Thus, there is a natural and logical connection among the sections. Moreover, the First, Second and Fourth District Court have considered single subject challenges to the Act and each has rejected such a challenge. Petitioner does not even cite any of these case much less attempt to argue why they are incorrect. The PRRP Act does not violate the single subject provision.

ARGUMENT

ISSUE I

DOES THE PRISON RELEASEE REOFFENDER PUNISHMENT ACT VIOLATE THE SINGLE SUBJECT PROVISION OF THE FLORIDA CONSTITUTION? (Restated)

Petitioner is attempting to raise a single subject challenge to the Prison Releasee Reoffender Punishment Act. This Court should decline to address petitioner's challenge. First, the issue certified as a question of great public importance by the First District has already been decided by this Court. State v. Cotton, 25 Fla. L. Weekly S463 (Fla. June 15, 2000)(holding the prison releasee reoffender statute does not violate separation of powers principles). Furthermore, there is no conflict among the district courts regarding the single subject challenge. All three district courts that have decided the issue have held that the Act does not violate the single subject provision. This Court should decline to address petitioner's challenge.

Jurisdiction

This Court should not address petitioner's single subject challenge to the Prison Releasee Reoffender Act. The First District did not certify this issue to this Court nor is the decision on this issue in direct or express conflict with any other district court's decision. There is no conflict among the District Courts regarding this issue and no district court has certified this issue. No district court had held that this Act violates the single subject provision. Indeed, all three district that have

addressed the issue have found no violation of the single subject rule. Petitioner is attempting to raise an issue in this Court where no conflict exists and no district court has certified as a question of great public importance.

The State is aware of numerous case that hold that once the Florida Supreme Court accepts jurisdiction to answer the certified question, the Florida Supreme Court may review the entire record for error.[1] The State is also aware that this Court routinely declines to address issues which are not central to the resolution of the issue on which jurisdiction is based.[2] Additionally, this Court has declined to address additional issues in the particular

---

[1] Ocean Trail Unit Owners Ass'n, Inc. v. Mead, 650 So.2d 4, 6 (Fla. 1994)(explaining that having accepted jurisdiction to answer the certified question, the Florida Supreme Court may review the entire record for error); Savoie v. State, 422 So.2d 308, 312 (Fla. 1982); Tyus v. Apalachicola Northern R.R., 130 So.2d 580 (Fla. 1961); Lawrence v. Florida E. Coast Ry., 346 So.2d 1012, 1014 n.2 (Fla.1977); Bould v. Touchette, 349 So.2d 1181, 1183 (Fla.1977)(stating that "[i]f conflict appears, and this Court acquires jurisdiction, we then proceed to consider the entire cause on the merits").

[2] Raulerson v. State, 2000 WL 963827, *11 n.6 (Fla. July 13, 2000)(declining to address the "ancillary" arguments raised by the petitioners); Seccia v. State, 2000 WL 963854, *1 n.1 (Fla. July 13, 2000)(declining to address the other issues that are not the basis of jurisdiction); Wood v. State, 750 So.2d 592, 595 n. 3 (Fla. 1999)(noting that the other issues raised are beyond the scope of the certified conflict and declining to address them. State v. Thompson, 24 Fla. L. Weekly S224, n.7(Fla. 1999)(stating "[w]e decline to address the other issue raised by Thompson since it was not the basis for our review"); Scoggins v. State, 726 So.2d 762, n.7 (Fla. 1999)(stating: "[w]e decline to address Scoggins' second issue as it is beyond the scope of the conflict issue); State v. O'Neal, 724 So.2d 1187, n.1 (Fla. 1999)(stating: "[w]e decline to address the other issue raised by O'Neal since it was not the basis for our review.").

context of a prison releasee reoffender challenge based on State v. Cotton, 25 Fla. L. Weekly S463 (Fla. June 15, 2000). Ellis v. State, 2000 WL 889788 at *1 (Fla. July 6, 2000)(declining to address the other issues raised). Despite this restraint, this Court continues to be burdened with reviewing and the State continues to be burdened with briefing issues which have been definitely resolved in the district court. Accordingly, the State urges this Court to clarify its case law and limit this doctrine to threshold or preliminary questions directly related to the certified question.

This Court should hold that issues unrelated to the issue upon which jurisdiction is based should not be raised and will not be addressed. Only issues that would cause the issues upon which jurisdiction is based to be erroneously decided should be addressed by this Court. For example, in Hall v. State, 752 So.2d 575, n.2 (Fla. 2000), this Court decided the conflict issue by resolution of a preliminary question because the preliminary question controlled "the final decision in this case". The Fifth District had interpreted a statute to allow an appellate court to "direct" the Department of Corrections to sanction an inmate for frivolous litigation; whereas, the Second District had interpreted the same statute to limit an appellate court to "recommending" that the inmate be sanctioned to the Department. This Court explained that to correctly determine this conflict, it was first necessary to determine if the statute was limited to civil suits. Such a determination was central to a correct interpretation of the

statute and neither district court had addressed this critical, threshold matter. This Court then held, that contrary to either district court's reasoning, the statute did not authorize an appellate court to either direct or recommend sanctions because the statute did not apply to collateral criminal proceedings.

This Court, in Hall, properly applied this doctrine. This Court was faced with a conflict issue in which both district court had incorrectly applied a civil statute to criminal cases. Neither district was correct regarding the proper interpretation and application of the statute. To correctly interpret the statute, this Court had to address the threshold question of whether the statute applied to criminal proceedings at all. This is a proper use of the doctrine and highlights that the doctrine is necessary in certain cases. However, the doctrine needs to be limited to cases where not addressing the preliminary issue would cause the issue upon which jurisdiction is based to be erroneously decided.

Moreover, limiting this doctrine in this manner would bring the case law into full accord with the 1980 constitutional amendment. Article V, § 3(b)(3), Fla. Const. The current doctrine improperly allows this Court to reach an issue on which there is no conflict or certified question and is not necessarily decided to correctly answer the certified question.

Furthermore, the doctrine, as it currently exists, encourages an appellant to relitigate every issue that was raised in the district court in this Court just as petitioner is doing. This undermines judicial efficiency. In Zirin v. Charles Pfizer & Co., 128 So.2d

594, 596 (Fla.1961), Justice Drew explained the rationale of this doctrine:

> Piecemeal determination of a cause by our appellate court should be avoided and when a case is properly lodged here there is no reason why it should not then be terminated here.... "[m]oreover, the efficient and speedy administration of justice is ... promoted" by doing so.

However, contrary to this Justice Drew's observation, the litigation on this issue should have terminated in the First District. While the State agrees that needless, piecemeal litigation should be avoided, this doctrine, as currently formulated, does not promote this goal. Rather, this doctrine encourages needless, additional litigation. The efficient and speedy administration of justice would be promoted more by prohibiting additional litigation regarding an issue which has been definitely resolved in the district court. However, limiting to doctrine to preliminary questions directly related to the certified or conflict issue, would end the unnecessary litigation without impeding this Court ability to fully, fairly and correctly resolve the conflict or certified issue upon which jurisdiction was based.

This Court should clarify this doctrine and hold that it has jurisdiction to decide only additional issues related to the certified question, not "extra" issues which are not central to the correct resolution of the certified question. This Court should hold that it has no jurisdiction over the single subject issue because it is an "extra" issue in this case.

Presumption of Constitutionality

There is a strong presumption of constitutionality afforded to legislative acts under which courts resolve every reasonable doubt in favor of the constitutionality of the statute. See State v. Kinner, 398 So.2d 1360, 1363 (Fla. 1981); Florida League of Cities, Inc. v. Administration Com'n, 586 So.2d 397, 412 (Fla. 1st DCA 1991). An act should not be declared unconstitutional unless it is determined to be invalid beyond a reasonable doubt. Todd v. State, 643 So.2d 625, 627 (Fla. 1st DCA 1994).

Standard of Review

A standard of review is deference that an appellate court pays to the trial court's ruling. Martha S. Davis, *A Basic Guide to Standards of Judicial Review*, 33 S.D. L. REV. 468 (1988). There are three main standards of review: *de novo*, abuse of discretion and competent, substantial evidence. PHILIP J. PADOVANO, FLORIDA APPELLATE PRACTICE § 9.1 (2d ed. 1997). The constitutionality of a sentencing statute is reviewed *de novo*. United States v. Rasco, 123 F.3d 222, 226 (5th Cir. 1997)(reviewing the constitutionality of the federal three strikes statute by *de novo* review); United States v. Quinn, 123 F.3d 1415, 1425 (11th Cir. 1997). Under the *de novo* standard of review, the appellate court pays no deference to the trial court's ruling; rather, the appellate court makes its own determination of the legal issue. Under the *de novo* standard of review, an appellate court freely considers the matter anew as if no decision had been rendered below.

Merits

Petitioner argues that the Prison Releasee Reoffender Act violates the single subject provision of the Florida Constitution. The State respectfully disagrees. There is a reasonable and rational relationship among the sections of the Act. All the sections of the Act are all designed to control either prison releasees who commit new offenses upon release or probationers who violate the terms of their probation. Section two defines who is a prison releasee reoffender and establishes the mandatory penalties for these reoffenders; section three provides for warning upon release that a releasee may be subject to prison releasee reoffender status if he commits another felony within three years of being released; section four requires that a releasee whose release is revoked and sent back to prison shall forfeit prison credits; section five expands the power to arrest probationers or those on community control who commit violations from probation officers to law enforcement officers; section six makes no change to the existing statute and is part of the legislation for purposes of incorporation. The underlying theme of the legislation is to control those who commit offense after being released from prison or while on probation. Thus, there is a natural and logical connection among the sections. Moreover, the First, Second and Fourth District Court have considered single subject challenges to the prison releasee reoffender Act and each has rejected such a challenge. Petitioner does not even cite any of these case much

less attempt to argue why they are incorrect. The PRRP Act does not violate the single subject provision.

The single subject rule contained in article III, section 6 of the Florida Constitution provides:

> Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

The PRRP Act contains seven sections. Section one is the title. Section two created and defined a new category of offender for sentencing purposes, *i.e.*, the prison releasee reoffender, and establishes mandatory determinate sentences for these reoffenders. Section three provides for warning upon release that a releasee may be subject to prison releasee reoffender status if he commits another felony within three years of being released; section four requires that a releasee whose release is revoked and sent back to prison forfeit prison credits; section five expands the power to arrest probationers or those on community control who commit violations from probation officers to law enforcement officers; section six makes no change to the existing statute and is part of the legislation for purposes of incorporation. Section seven establishes the effective date of this new legislation.

Petitioner's main argument is that section five which allows a law enforcement officer as well a probation officer to arrest probationers who violate their probation is not logically connected to the new sentencing category created by the prison releasee reoffender statute. However, this section, like the other sections of the Act, concern controlling repeat offenders and keeping them

"off the streets". Contrary to petitioner's claim, controlling crime through expanding the powers of law enforcement officers to arrest probationers who are "out on the street" and increasing sentencing penalties for prior offenders who are "out on the streets" is a single theme.

The First District reasoned that the Prison Releasee Reoffender Act does not violate the single subject provision because all sections of the Act deal with reoffenders. Chambers v. State, 752 So.2d 64 (Fla. 1st DCA 2000), *citing and quoting*, Jackson v. State, 744 So. 2d 466 (Fla. 1st DCA 1999), *review granted on other grounds*, 749 So.2d 503 (Fla. 1999); Turner v. State, 745 So. 2d 351 (Fla. 1st DCA 1999)(finding without merit the argument that the Act violates the single subject requirement of the Florida Constitution and observing that the references in the preamble to "violent felony offenders" do not reflect an intent to "reach only those defendants with a prior record of violent offenses."). The Second and Fourth Districts have also rejected this constitutional challenge. In Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999), the Second District held that the prison releasee reoffender Act did not violate the single subject requirement of Article III, Section 6, of the Florida Constitution. Grant argued that some sections of the Act concern the length of sentence and the forfeiture of gain time while other sections allow law enforcement officers to arrest probationers and community controllees without a warrant and therefore, the Act violates the single subject, because they are not reasonably related to the specific mandatory

punishment provision in subsection eight. Noting that all the District court that have addressed the issue have rejected such a challenge, the Second District quotes and adopts the Fourth District reasoning in Young v. State, 719 So.2d 1010 (Fla. 4th DCA 1998), *review denied*, 727 So.2d 915 (Fla.1999)(noting that the preamble to the legislation states that its purpose was to impose stricter punishment on reoffenders to protect society and concluding that because each section dealt in some fashion with reoffenders, that the Act does not violate the single subject requirement). Petitioner does not discuss these cases or even attempt to argue that they are incorrectly decided. The Act does not violate the single subject provision.

CONCLUSION

The State respectfully submits that because the certified question upon which this Court has jurisdiction has already been answered by this Court, the additional issue raised by petitioner but not certified by the district court should not be addressed.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

_____
JAMES W. ROGERS
TALLAHASSEE BUREAU CHIEF,
CRIMINAL APPEALS
FLORIDA BAR NO. 325791

_____
CHARMAINE M. MILLSAPS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0989134

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300

COUNSEL FOR RESPONDENT
[AGO# 00-1-8015]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S ANSWER BRIEF ON THE MERITS has been furnished by U.S. Mail to Phil Patterson, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 9th day of August, 2000.

_____
Charmaine M. Millsaps
Attorney for the State of Florida

[C:\Supreme Court\07-12-01\00-1215ans.wpd --- 7/13/01,8:08 am]