

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NO. 00-1252

BILLY LAMONT CULPEPPER,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

FILED
THOMAS D. HALL
JUL 17 2000

CLERK, SUPREME COURT
BY

BRIEF OF PETITIONER ON THE MERITS

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

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BRIEF OF PETITIONER ON THE MERITS

INTRODUCTION

Petitioner, Billy Lamont Culpepper, was the appellant in the district court of appeal and the defendant in the Circuit Court. Respondent, State of Florida, was the appellee in the district court of appeal, and the prosecution in the Circuit Court. In this brief, the symbol "R" will be used to designate the record on appeal, the symbol "TR" will be used to designate the transcripts of hearings, and the symbol "A" will be used to designate the appendix attached to this brief.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged with resisting arrest without violence, aggravated battery, petit theft and robbery with a deadly weapon. (R. 1-4). After deliberations the jury found defendant guilty of all counts charged in the information, (R. 49). The trial judge entered a judgement of acquittal as to the petit theft charge. (R. 54). The court adjudicated defendant a Prison Releasee Reoffender and sentenced him to life imprisonment as to the robbery, fifteen years as to the aggravated battery and 364 days as to the resisting arrest without violence. (R. 57-61). Counsel objected to the sentencing under the prisoner releasee reoffender act due to the mandatory provisions under the act.

On direct appeal petitioner challenged the validity of the Prison Releasee Reoffender Act. This argument was rejected by the Third District Court of Appeal. The court then certified the issue to this Court. This Court entered an order requiring briefs on the merits while reserving the right to review the issue of jurisdiction.

SUMMARY OF ARGUMENT

The trial judge concluded that the provision of Florida Felony Re-Offender Act were mandatory. On direct appeal to the Third District Court of Appeal counsel argued that this statute violated the separation of powers doctrine. The Third District Court of Appeal rejected this argument and certified the issue to this court. In *State v. Cotton*, 25 Fla. L. Weekly S463 (Fla. 2000), this Court resolved this issue and concluded that the Prison Releasee Reoffender Act is in fact constitutional and, therefore, the issue certified in this case has been resolved against Petitioner.

ARGUMENT

FLORIDA STATUTE 775.082, THE FELONY RE-OFFENDER ACT, IS UNCONSTITUTIONAL DUE TO THE MANDATORY SENTENCE SCHEME WHICH VIOLATES THE SEPARATION OF POWERS CLAUSE OF THE FLORIDA CONSTITUTION.

The trial judge concluded that the provision of Florida Felony Re-Offender Act were mandatory. On direct appeal to the Third District Court of Appeal counsel argued that this statute violated the separation of powers doctrine. The Third District Court of Appeal rejected this argument and certified the issue to this Court. In *State v. Cotton*, 25 Fla. L. Weekly S463 (Fla. 2000), this Court resolved this issue and concluded that the Prison Releasee Reoffender Act is in fact constitutional and, therefore, the issue certified in this case has been resolved against Petitioner.


CONCLUSION

Based upon the foregoing, the issue in this case has already been resolved by this

Court.

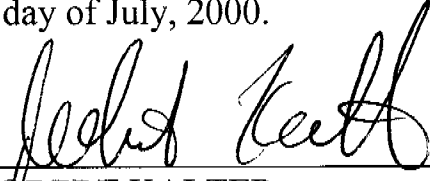
Respectfully submitted,

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CERTIFICATE OF SERVICE

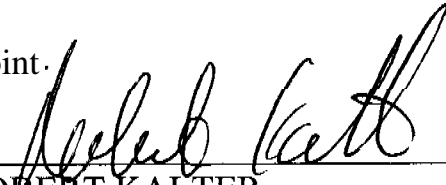
I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 950, Miami, Florida 33131, on this 12th day of July, 2000.



ROBERT KALTER
Assistant Public Defender

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in brief is point proportionately spaced Times New Roman, 14 point.



ROBERT KALTER
Assistant Public Defender

IN THE SUPREME COURT OF FLORIDA

CASE NO. 00-1252

BILLY LAMONT CULPEPPER,

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-vs-

STATE OF FLORIDA,

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ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

APPENDIX

Opinion

Third District Court of Appeal "A"

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILER, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D., 2000

BILLY LAMONT CULPEPPER,

**

Appellant,

**

vs.

** CASE NO. 3D99-2387

THE STATE OF FLORIDA,

** LOWER TRIBUNAL NO. 98-42611

Appellee.

**

Opinion filed May 17, 2000.

An appeal from the Circuit Court for **Dade** County, Alex E. Ferrer, Judge.

Bennett H. Brummer, Public Defender, and Robert Kalter, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Frank J. Ingrassia (Ft. Lauderdale), Assistant Attorney General, for appellee.

Before LEVY and GODERICH, JJ., and NESBITT, Senior Judge,

PER CURIAM.

Appellant was charged with resisting arrest without violence, aggravated battery, petit theft, and robbery with a deadly weapon.

At the conclusion of the state's closing arguments, the prosecutor stated that "[t]he only thing for you to do now is return your verdict of guilty. And you'll feel good when you do it." Since there was no contemporaneous or specific objection, and because of the overwhelming evidence against appellant in the case, we consider any error resulting from this statement to be harmless, See State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986).

We also disagree with appellant's second argument, that the Prison Releasee Reoffender Punishment Act, Florida Statutes section 775.082 (1997), is unconstitutional due to the mandatory sentence scheme. This is in conformity with our holding in McKnight v. State, 727 So. 2d 314 (Fla 3d DCA 1999), review granted by McKnight v. State, 740 So. 2d 528 (Fla. 1999). Accordingly, we affirm, but certify this case so as to pair it for review with McKnight.