

IN THE SUPREME COURT OF FLORIDA

FILED
THOMAS D. HALL
JUN 16 2000
CLERK SUPREME COURT
BY KIT

RALPH A. JOHNSON, :
 :
 Petitioner, :
 :
 vs. :
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

Case No. SC00-1326

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 OF THE CASE AND FACTS

The State Attorney for the Sixth Judicial Circuit, Pinellas County, Florida filed an information charging appellant, Ralph A. Johnson, with strong-armed robbery and battery on a person over age 65. Trial was held on July 13, 1999, before the Honorable Richard Luce. The jury listened to the testimony of the witnesses, saw the evidence, heard the argument of counsel and the instructions of the court. The jury deliberated and found appellant guilty as charged.

Thereafter appellant was adjudicated guilty, adjudged to be an habitual offender as well as a prison releasee reoffender and sentenced to thirty (30) years, with a fifteen (15) year minimum mandatory as a prison releasee reoffender. Fifteen (15) years of the thirty (30) were suspended in lieu of which appellant **was** to serve fifteen (15) years probation on the robbery count. Ten (10) years was imposed for the battery count. Appellant also filed a motion for new trial which was denied by the court.

Subsequently, appellant filed a notice of appeal to the District Court of Appeal, Second District. In its opinion of May 31, 2000, the Second District affirmed petitioner's conviction and sentence citing Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999).
[See appendix]

Petitioner has filed his notice to invoke the discretionary review 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 JURISDICTION 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, 745 so. 2d 519 (Fla. 2d DCA 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

1. The opinion of the Second District filed May 31, 2000 in Ralph Johnson, 2D99-3218.

PD

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

RALPH A. JOHNSON,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)

CASE NO. 2D99-3216

Opinion filed May 31, 2000.

Appeal from the Circuit Court for Pinellas
County; Richard A. **Luce**, Judge.

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

Robert A. **Butterworth**, Attorney General,
Tallahassee, and Anne S. Weiner,
Assistant Attorney General, Tampa,
for Appellee.

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PER CURIAM.

Affirmed. See Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999).

THREADGILL, A.C.J., **ALTENBERND** and **GREEN**, JJ.. Concur.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Anne S. Weiner,
Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on
this 14 day of June, 2000.

Respectfully submitted,



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