IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, vs. ANTHONY VALENTINO, Respondent.	))))))CASE NO. SC00-1376))))))

RESPONDENT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent was the defendant in the trial court and was the Appellant in the District Court of Appeal, Fourth District. He will be referred to by name and as Respondent in this brief.

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2 (d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel for petitioner hereby certifies that the instant brief has been prepared with 12 point Courier New Type, a font that is not spaced proportionately.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts.

SUMMARY OF ARGUMENT

POINT ON APPEAL

Petitioner's claim that the Fourth District Court of Appeal's decision in State v. Valentino, 25 Fla. Law Weekly D1083 (Fla. 4th DCA May 3, 2000) improperly applied the double jeopardy clauses of the United States and Florida Constitutions in declaring the trial court's triple designation of appellant as a habitual felony offender, violent career criminal, and prison releasee reoffender a double jeopardy violation correctly states the applicable law, but incorrectly applies the law to the facts of Respondent's case. That is, while Respondent agrees that the ultimate issue to be resolved in reviewing a criminal sentence under the double jeopardy clause of either constitution involves legislative intent, Petitioner's interpretation of the relevant statutory provisions fails to follow the rationales of either double jeopardy jurisprudence or the statutory construction tenet known as the rule of lenity. Analyzed correctly, the Fourth DCA's decision in Adams v. State, 750 So.2d 659 (Fla. 4th DCA 1999), from which resolution of Respondent's sentencing issue arose, clearly follows both the letter and spirit of double jeopardy and lenity principles, especially when compared to cases from other appellate districts which considered this same issue. Accordingly, Valentino v. State, 25 Fla. Law Weekly D1083 (Fla. 4th DCA May 3, 2000) must be approved.

ARGUMENT

POINT ON APPEAL

SINCE VALENTINO V. STATE, 25 Fla. Law Weekly D1083 (FLA. 4TH DCA May 3, 2000) CORRECTLY RESOLVED RESPONDENT'S TRIPLE RECIDIVIST DESIGNATIONS INVOLVING ONE SENTENCE, UTILIZING BOTH THE DOUBLE JEOPARDY CLAUSES OF THE UNITED STATES AND FLORIDA CONSTITUTIONS AS WELL AS THE LENITY RULE OF STATUTORY CONSTRUCTION, THAT DECISION MUST BE APPROVED IN TOTO.

Petitioner's preliminary sketch of the general rules governing double jeopardy analysis, in terms of legislative intent constituting the ultimate source for resolution of this issue, Petitioner's Initial Brief on the Merits, pp. 5-6, is literally correct. That is, the primary protection provided by double jeopardy in the realm of sentencing is "against multiple punishments for the same offense," Lippman v. State, 633 So.2d 1061, 1064 (Fla. 1994), since "[double jeopardy's] purpose is to ensure that sentencing courts do not exceed, by the device of multiple punishments, the limits prescribed by the legislative branch of government, in which lies the substantive power to define crimes and prescribe punishments," Jones v. Thomas, 491 U.S. 376, 381, 109 S. Ct. 2522, 2525-2526, 105 L.Ed.2d 322 (1989). More specifically, "the language of the double jeopardy clause protects against . . . the actual imposition of two punishments for the same offense," Witte v. United States, 515 U.S. 389, 396, 115 S.Ct. 2199, 2204, 132 L.Ed.2d 351 (1995); see also Ex Parte Bosso, 41 So.2d 322, 323 (Fla. 1949) (court cannot inflict two punishments for same offense). In the Fourth DCA case from which the result at issue in Valentino was derived, Adams v.

State, 750 So.2d 659, 660-661 (Fla. 4th DCA 1999), that Court noted that Ex Parte Lange, 18 Wall. 163, 85 U.S. 163, 21 L.Ed.872 (1873) constitutes the United States Supreme Court's clearest exposition of the underlying rationale for upholding double jeopardy vis-a-vis multiple punishments:

> If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offense . . . . There has never been any doubt of [double jeopardy's] entire and complete protection of the party when a second punishment is proposed in the same Court, on the same facts, for the same statutory offense.

750 So.2d at 661. Lange's stark description of the fate awaiting a criminal defendant in the absence of double jeopardy protections is worth considering in toto:

> . . . . the principle intended to be asserted by the constitutional provision [concerning double jeopardy] must be applied to all cases where a second punishment is attempted to be inflicted for the same offense by a judicial sentence. For what avail is the constitutional protection against more than one trial if there can be any number of sentences pronounced on the same verdict? Why is that, having once been tried and found guilty, a [criminal defendant] can never be tried again for that same offense? Manifestly it is not the danger or jeopardy of being second time found guilty. It is the punishment that would legally follow the second conviction which is the real danger guarded against by the constitution. But if, after judgment has been rendered on the conviction, and sentence of that judgment executed on the criminal, he can again be sentenced on that conviction to another and different punishment, or to endure the same punishment a second time, is the constitutional restriction of any value? Is it not its intent and its spirit in such a

> case as much violated as if a new trial had been had and, on a second conviction, a second punishment inflicted?

18 Wall. 163, 173. As Respondent will demonstrate, infra., the Court in Adams properly applied the teachings of Ex Parte Lange in resolving the double jeopardy question adversely to Petitioner's position in this appeal, rendering the Fourth DCA's decision in Valentino legally correct, and hence subject to affirmance by this Court.

The statutory provision at issue in this case is found in Florida Statutes, Section 775.082 (9) (c) (1996) the "prison releasee reoffender" act, which states:

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

In weighing the legal import of the identified statutory language, in terms of divining the legislative intent behind this subsection, it is necessary to note that penal statutes such as Section 775.082 must be strictly construed, giving a construction favorable to the accused where the words used are susceptible to multiple meanings see Florida Statutes, Section 775.021 (1) (1996); McLaughlin v. State, 721 So.2d 1170, 1172 (Fla. 1998); State v. Perkins, 576 So.2d 1310, 1312 (Fla. 1991); State v. Wershow, 343 So.2d 605, 608 (Fla. 1977). This "rule of lenity" also applies where the statute in question involves criminal penalties, Logan v. State, 666 So.2d 260, 261 (Fla. 4th DCA 1996). In Bifulco v. United States, 447

U.S. 381, 100 S.Ct. 2247 (1980), the United States Supreme Court applied the same rule of construction to a federal criminal penalty statute, quoting from its previous decision in Ladner v. United States, 358 U.S. 169, 178, 79 S.Ct. 209, 214 (1958) that "this policy of lenity means that the Court will not interpret a federal criminal statute so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended", 447 U.S. at 387, 100 S.Ct. at 2252. Judged by these standards, the three separate arguments presented by Petitioner in support of its claim that the Fourth DCA's interpretation of Section 775.082 (9) (c) was incorrect is without substantial merit.

Thus, for example, Petitioner first postulates that this Court's description of the prison releasee reoffender statute as effectively creating a "mandatory minimum sentencing scheme" allows for the imposition of a PRR sentence concurrently with a habitual felony offender designation on the same basis that other "mandatory minimum" terms of incarceration may be imposed concurrently with sentencing imposed under the general felony sentencing scheme found at Section 775.082, Petitioner's Initial Brief on the Merits at pp. 10-12, 19, citing this Court's decision in Jackson v. State, 659 So.2d 1060 (Fla. 1996). Unfortunately for Petitioner, even a cursory examination of Jackson indicates that decision upholding the concurrent imposition of a three year "firearm" mandatory term of incarceration while additionally designating a criminal

defendant as a habitual felony offender was not based on constitutional double jeopardy principles, but instead concerned whether the "firearm" mandatory minimum term of that sentence had to be ordered to run concurrently or consecutively, 659 So.2d at 1063. Next, Petitioner points out that under Florida Statutes, Section 944.275 (4) (b) (3), gain time of any variety is disallowed where a life sentence has been imposed; here, petitioner's initial surmise that the Adams court's reliance on the impact of differing recidivist designations as adversely impacting a defendant's entitlement to gain time, and hence the length of the actual sentence served, appears to be correct. Nonetheless, since Adams was otherwise correctly resolved on the legislative intent issue, that Court's reliance on questions of gain time entitlement in discerning application of double jeopardy protections involving Respondent's sentence does not affect resolution of this issue.

Finally, Petitioner quotes language found at Section 775.082 (9) (d) (1) stating "the intent of the legislature [is] that offenders previously released from prison who meet the criteria [for] prison releasee reoffender state be punished to the fullest extent of the law and as provided in this subsection . . .," arguing that this provision evidences the legislature's intent to allow "cumulative punishments" involving dual or triple recidivist designations in the imposition of a particular length of a criminal defendant's sentence, analogizing to statutes allowing the concurrent imposition of monetary and incarcerative sentences as

reflecting the legislature's intent to allow "cumulative punishments" in the context of the prison releasee reoffender statute, Petitioner's Initial Brief on the Merits, pp. 18-19. However, Petitioner's reliance on the "punish to the fullest extent of the law" provision of Section 775.082 (9) (c) as support for its dual designation in sentencing argument fails to fully honor the rule of lenity, since that statutory provision clearly is subject to alternative reasonable interpretations, due to its inherent vagueness. Instead, resolution of the issue raised in this appeal more appropriately involves application of the general rule of statutory interpretation that the legislature should not be presumed to employ "useless [statutory] language which serves no purpose", see e.g. Unruh v. State, 659 So.2d 242 (Fla. 1996) (general rule of statutory interpretation is that legislatures do not intend to enact purposeless and therefore useless legislation); Johnson v. Feder, 485 So.2d 409 (Fla. 1986); City of North Miami vs. Miami Herald Publishing Company, 468 So.2d 218 (Fla. 1985); Smith v. Piezo Technology and Professional Administrators, 427 So.2d 182 (Fla. 1983). That is, the language found at Section 775.082 (9) (c) that "nothing in this subsection shall prevent the Court from imposing a greater sentence of incarceration as authorized by law, pursuant to Section 775.084 or any other provision of law," would be meaningless if interpreted as suggested by Petitioner to allow the imposition of multiple recidivist designations, since such statutory language would not be necessary

if sentences such as were imposed below or in Adams, et. al. were allowable. Instead, properly applying the rule of lenity strongly suggests that the most logical interpretation of Section 775.082 (9) (c) is at a sentencing court is free to impose any sentence, whether under the sentencing guidelines, habitual felony offender, habitual violent felony offender, violent career criminal, or "three-time violent felony offender" statutes, where the other sentencing alternatives available to the judge result into a harsher sentence, whether measured in presumptive length actually imposed or as the result of gain time provisions. Any other interpretation of this statute runs afoul of the "no useless or meaningless legislation" Cannon of interpretation espoused by this Court in the cases previously recited, and numerous others not specified.[1] In sum, since here Petitioner's sentencing designations as a habitual felony offender, violent career criminal, and prison releasee reoffender constituted the "actual imposition of two punishments for the same offense," Witte v. United States, supra. 515 U.S. at 396, 115 S.Ct. at 2204, a legitimate application of constitutional double jeopardy principles supports the Fourth

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[1] A review by undersigned counsel of both the staff analysis for House Bill 1371 (1997), the original source for Section 775.082(9), see www.leg.state. Fl. US/Session/1997/house/bills/ analysis, as well as audiotapes of House and Senate committee hearings on HB 1371, and house floor debates regarding same, discloses nothing relevant to the legislative intent issue posed here, see State Archives, Series 38, Box 251, Series 625, Box 808, and Series 414, Box 1180.

DCA’s finding that appellant’s multiple recidivist designation violated double jeopardy, both in this cause and in Adams.

As a consequence, Valentino v. State, 25 Fla. Law Weekly D1083 (Fla. 4th DCA May 3, 2000) and Adams v. State, 750 So.2d 659 (Fla. 4th DCA 1999) must be approved.

CONCLUSION

Based on the foregoing arguments, and the authorities recited therein, this cause must be remanded with proper directions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Jeanine M.Germanowicz, Assistant Attorney General, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida 33401 by courier this _____ day of August, 2000.

____
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