

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

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STATE OF FLORIDA,
Petitioner,

v.

CASE NO. SC00-1396
5TH DCA CASE NO. 5D99-1203

STEPHEN DRAGANI,
Respondent.

ON NOTICE TO INVOKE DISCRETIONARY REVIEW
OF A DECISION OF THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

RELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL
Fla. Bar # 618550

ANTHONY J. GOLDEN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #0162172
444 Seabreeze Blvd.
5th Floor
Daytona Beach, FL 32118
(904) 238-4990
Fax No. (904) 238-4997
COUNSEL FOR PETITIONER

CERTIFICATE OF TYPE SIZE AND FONT

This brief is typed in 12 point Courier nonproportional space font.

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Section 775.084(4)(b)2, Florida Statutes (1997) 1,4

STATEMENT OF THE CASE AND FACTS

On August 21, 1997, Respondent, Stephen Dragani, was charged by Information filed in Seminole County Circuit Court Case No. **97-2369-CFA** with robbery and with threatening to discharge a destructive device. (Appendix I -- Information). On September 3, 1998, after trial by jury, Respondent was found guilty as charged as to both offenses. On April 8, 1999, Respondent was sentenced to twenty years imprisonment for the robbery. He was sentenced to a concurrent term of fifteen years imprisonment for threatening to discharge a destructive device. Under the "**Special Provisions**" section of the sentencing form, he was ordered to serve a minimum of ten years on each count pursuant to Section **775.084(4)(b)2**, Florida Statutes (1997), as an habitual violent felony offender and he was ordered to serve 100% of his fifteen year sentence without eligibility for gain time pursuant to Section **775.082(8)(b)**, Florida Statutes (1997), as a prison releasee reoffender. (Appendix II -- Sentence).

Respondent appealed his convictions and sentences to the Fifth District Court of Appeal of the State of Florida in its Case No. **5D99-1203** which affirmed the convictions in an opinion filed on June 1, 2000. However, the District Court did find that it was a violation of Respondent's "double jeopardy rights" to sentence him under both the habitual felony offender statute and the prison **releasee** reoffender statute. The Court did acknowledge that its decision on this double jeopardy issue was in conflict with that of the Second District Court of Appeal in Grant v. State, 745 So. 2d

519 (Fla. 2d DCA 1999). Drasani v. State, 25 Fla. L. Weekly D1341
(Fla. 5th DCA June 1, 2000). (Appendix III - 5th DCA Opinion). The
State timely filed its notice to invoke this Court's discretionary
review.

SUMMARY OF ARGUMENT

The Fifth District Court of Appeal acknowledged that its decision in the instant case is in express and direct conflict with the decision of the Second District Court of Appeal in Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999), review accepted April 12, 2000 SC99-164, holding that sentencing as both an habitual felony offender and as a prison releasee reoffender does not violate the double jeopardy clause. This Court should exercise its discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), to review this decision as well.

ARGUMENT

THE OPINION OF THE FIFTH DISTRICT COURT OF APPEAL IN THE CASE **SUBJUDICE** AFFIRMING PETITIONER'S JUDGMENTS, BUT VACATING HIS SENTENCES AS AN HABITUAL VIOLENT FELONY OFFENDER AND AS A PRISON RELEASEE REOFFENDER IS IN EXPRESS AND DIRECT CONFLICT WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN GRANT V. STATE, 745 So. 2d 519 (Fla. 2d DCA 1999), review accepted April 12, 2000 **SC99-164**.

Under Article V, Section 3 (b) (3) of the Florida Constitution and Florida Rule of Appellate Procedure **9.030(a)** (2) (A) (iv), this Court may review any decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. In Reaves v. State, 485 So. 2d 829 (Fla. 1986), this Court said that the conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision.

Respondent was sentenced to twenty years imprisonment for robbery. He was sentenced to a concurrent term of fifteen years imprisonment for threatening to discharge a destructive device. Under the "Special **Provisions**" section of the sentencing form, he **was** ordered to serve a minimum of ten years on each count pursuant to Section **775.084(4)(b)2**, Florida Statutes (1997), as an habitual violent felony offender and he was ordered to serve 100% of his fifteen year sentence without eligibility for gain time pursuant to Section **775.082(8)(b)**, Florida Statutes (1997), as a **prison** release reoffender.

In Grant v. State, 745 So. 2d 519, 522 (Fla. 2d DCA 1999), the Second District Court of Appeal held that a sentence to be served as both an habitual felony offender and as a prison releasee reoffender does not violate double jeopardy. In Jones v. State, 25 Fla. L. Weekly D224 (Fla. 2d DCA January 21, 2000), jurisdiction accepted May 24, 2000, SC00-282, the Second District Court again held that sentences pursuant to both statutes did not violate double jeopardy, but certified conflict with decisions of the Fourth District Court of Appeal in Adams v. State, 24 Fla. L. Weekly D2394 (Fla. 4th DCA October 20, 1999); Glave v. State, 24 Fla. L. Weekly D 2546 (Fla. 4th DCA November 10, 1999) and Melton v. State, 24 Fla. L. Weekly D2719 (Fla. 4th DCA December 8, 1999).

In the case *subjudice*, the Fifth District Court of Appeal vacated Respondent's sentences as both an habitual violent felon and as a prison **releasee** reoffender asserting that those sentences violate his double jeopardy rights. However, that Court acknowledged that its decision conflicted with that of the Second District in Grant, Supra. Given that this issue is now pending before this Court in Grant and Jones, Supra, this Court should also accept jurisdiction in the above-styled case.

CONCLUSION

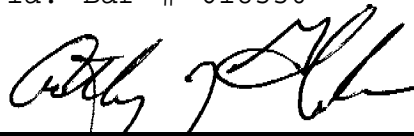
Since the Fifth District Court of Appeal has acknowledged that its decision in the instant case is in express and direct conflict with that of the Second District Court of Appeal in Grant, Supra, review of which is presently pending in this Court, this Court should exercise its discretionary jurisdiction in this case as well.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



KELLIE NIELAN
ASSISTANT ATTORNEY GENERAL
Fla. Bar # 618550

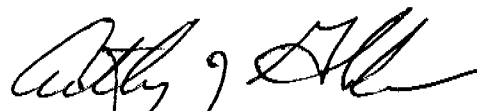


ANTHONY J. GOLDEN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #162172
444 Seabreeze Blvd.
5th Floor
Daytona Beach, FL 32118
(904) 238-4990
Fax No. (904) 238-4997

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Petitioner's Brief on Jurisdiction has been delivered to Barbara C. Davis, Esquire, Counsel for Respondent, Office of the Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this ^{3rd} day of July, 2000.



Anthony J. Golden
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
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v.

CASE NO.

STEPHEN DRAGANI,
Respondents.

_____ /

APPENDIX

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ANTHONY J. GOLDEN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #162172
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(904) 238-4990
FAX (904) 238-4997
COUNSEL FOR RESPONDENT

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