IN THE SUPREME COURT OF FLORIDA

JAMES KINSLER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

Case No. 2000-101

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

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STATEMENT OF TYPE USED

I certify the size and style of type used in this brief is Courier 12 point, a font that is not proportionally spaced.

STATEMENT OF THE CASE AND FACTS

On November 25, 1998, the state attorney for the Sixth Judicial Circuit in and for Pinellas County, Florida, filed an amended information against the Petitioner, James Kinsler, charging him with three counts of aggravated battery contrary to section 784.045, Florida Statutes (1997), and felonious possession of a firearm contrary to section 790.23, Florida Statutes (1997). On December 1, 1998, Mr. Kinsler pled guilty to the charges against him. The court accepted the plea, and sentenced Mr. Kinsler as a prison releasee reoffender to three concurrent terms of 15 years in prison for the aggravated battery charges. The court found Mr. Kinsler to be a violent habitual offender and sentenced him to a concurrent 15-year term for the possession of a firearm count.

Mr. Kinsler filed a timely pro se notice of appeal on December 31, 1998. On December 17, 1999, the Second District Court of Appeal affirmed the case without opinion, citing to Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999). Mr. Kinsler filed a Notice of Discretionary Jurisdiction in the Second District Court of Appeal on January 12, 2000.

SUMMARY OF THE ARGUMENT

This Court has jurisdiction to review Mr. Kinsler's case on two grounds. First, in citing to Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999), the Second District expressly construed the constitutionality of a statute and declared it valid. This Court has already accepted review of similar decisions holding §775.082(8), Fla. Stat. (1997) valid which were issued from other district courts of appeal. Second, the holding that a defendant may be sentenced as both a habitual felony offender and a prison releasee reoffender for a single offense is in conflict with decisions from other district courts of appeal.

ARGUMENT

ISSUE I

THE DISTRICT COURT'S DECISION EXPRESSLY DECLARES A STATE STATUTE VALID, GIVING THIS COURT JURISDICTION PURSUANT TO FLA. R. APP. P. 9.030(a)(2)(A)(i).

In Jollie v. State, 405 So. 2d 418 (Fla. 1981), the Florida Supreme Court held that a District Court of Appeal per curiam opinion which cites as controlling authority a decision that is pending review in the Florida Supreme Court continues to constitute prima facie express conflict and allows Supreme Court to exercise its jurisdiction. In Kinsler v. State, Case No. 99-00073 (Fla. 2d DCA Dec. 17, 1999), the Second District Court of Appeal affirmed the lower court without opinion and cited to Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999), a case currently pending review in the Florida Supreme Court (A1). Since the opinion issued by the Second District in Grant expressly declares §775.082(8), Fla. Stat. (1997) (the Prison Releasee Reoffender Act) to be valid, this Court can exercise its discretion to review the instant case.

The Grant opinion discusses constitutional challenges grounded upon the single subject requirement, separation of powers, cruel and unusual punishment, vagueness, due process, equal protection, and ex post facto. The opinion also notes that this Court has granted review on cases from other district courts of appeal which have upheld the statute against attacks on its constitutionality, e.g., Speed v. State, 732 So. 2d 17 (Fla. 5th DCA), rev. granted,

Case No. 95,706 (Fla. September 16, 1999); Woods v. State, 740 So. 2d 20 (Fla. 1st DCA), rev. granted, 740 So. 2d 529 (Fla. 1999); McKnight v. State, 727 So. 2d 314 (Fla. 3d DCA), rev. granted, 740 so. 2d 528 (Fla. 1999).

Since then, this Court has also granted review in King v. State, 729 so. 2d 542 (Fla. 1st DCA), Case No. 95,669 (Fla. November 15, 1999) and Lookadoo v. State, 737 So. 2d 637 (Fla. 5th DCA), Case No. 96,460 (Fla. November 15, 1999) . Both of these decisions accepted for review also found the Prison Releasee Reoffender Act to be constitutional.

This Court should exercise its discretion to review Grant's case for the same reasons that it granted review in previous decisions from other district courts of appeal which declared the Prison Releasee Reoffender Act valid.

ISSUE II

THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS FROM OTHER DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW, GIVING THIS COURT JURISDICTION PURSUANT TO FLA. R. APP. P. 9.030(a)(2)(A)(iv).

The Grant opinion issued by the Second District holds that imposition of a mandatory sentence under the Prison Releasee Reoffender Act which runs concurrently with a habitual felony offender sentence on the same offense does not violate constitutional provisions against double jeopardy. This holding directly conflicts with the Fourth District's decision in Adams v. State, 24 Fla. L. Weekly D2394 (Fla. 4th DCA October 20, 1999). In Adams, the court held that imposition of sentences as both a habitual felony offender and as a prison releasee reoffender for the same offense violated the double jeopardy guarantee against multiple punishments. The Adams court also determined that the Legislature did not intend to authorize "double sentences" when it enacted the Prison Releasee Reoffender Act.

Other decisions in conflict with the opinion at bar are Thomas v. State, 24 Fla. L. Weekly D2763 (Fla. 5th DCA December 10, 1999) and Melton v. State, 24 Fla. L. Weekly D2719 (Fla. 4th DCA December 8, 1999). Both of these decisions cite to Adams and direct the trial court to vacate one of the two sentences. Based on these decisions, and on Jollie, this Court has discretionary jurisdiction over the Petitioner's case. The Petitioner asks this Court to decide the issue in his favor.

CONCLUSION

Based upon the foregoing argument, reasoning and authorities, Kenneth Grant petitions this Court to grant review of the Second District's decision in Kinsler v. State, Case No. 99-00073 (Fla. 2d DCA Dec. 17, 1999).

APPENDIX

PAGE NO.

1. Second District Court of Appeal Opinion filed December 17, 1999. A1

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

IN THE DISTRICT **COURT OF APPEAL**

OF FLORIDA

SECOND DISTRICT

JAMES KINSLER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 99-00073

Opinion filed December 17, 1999.

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

James **Marion Moorman,** Public Defender, and Robert **D.** Rosen, Assistant Public Defender, Bar-tow, for Appellant.

Robert A. **Butterworth,** Attorney General, Tallahassee, and Helene S. Pames, **Assistant Attorney General,** Tampa, for **Appellee.**

PER **CURIAM.**

Affirmed. See Grant v. State, 24 **Fla.** L. Weekly 02627 (Fla. 2d DCA Nov. **24, 1999).**

PATTERSON, **C.J.,** and PARKER and STRINGER, JJ., Concur.

A1

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Helene S. Parnes, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this 13th day of January, 2000.

Respectfully submitted,

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