

IN THE SUPREME COURT OF FLORIDA

FILED
DEBBIE CAUSSEAU

JAN 28 2000

CLERK, SUPREME COURT

BY Dy

JAMES KINSLER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. 2000-161

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT REGARDING TYPE

The size and style of type used in this brief is 12-point Courier New, a font that is not proportionately spaced.

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OTHER AUTHORITIES:

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STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts.

SUMMARY OF THE ARGUMENT

Issue I: Respondent acknowledges that this Court has discretionary jurisdiction to review the decision of the Second District Court of Appeal in the instant case pursuant to Fla. R. App. Pro. 9.030(a)(2)(a)(I) (1999) because the decision construes the constitutional validity of the Prison Releasee Reoffender Statute.

Issue II: Respondent acknowledges that this Court has discretionary jurisdiction to review the decision of the Second District Court of Appeal in the instant case pursuant to Fla. R. App. Pro. 9.030(a)(2)(A)(iv) (1999) because the decision expressly and directly conflicts with the decisions of other district courts.

ARGUMENT

ISSUE I

WHETHER THE OPINION OF THE OPINION OF THE SECOND DISTRICT COURT OF APPEAL EXPRESSLY DECLARES A STATUTE VALID, GIVING THE FLORIDA SUPREME COURT DISCRETIONARY JURISDICTION TO REVIEW THE CASE PURSUANT TO FLA. R. APP. PRO. 3.030(a)(2)(A)(I) (1999).

The respondent acknowledges that the Grant v. State, Case No. 98-04943, opinion of the Second District Court of Appeal expressly declares the Prison Releasee Reoffender Statute (s. 775.082(8), Fla. Stat. (1997) to be valid and in doing so rejected constitutional attacks on the statute based upon: (1) the single subject rule (2) violation of separation of powers (3) cruel and unusual punishment (4) vagueness (5) due process (6) equal protection and (7) ex post facto. Numerous cases are presently pending before this Court regarding the validity of this statute based upon the constitutional grounds raised by the petitioner. This Court has already heard oral arguments regarding these issues in this case on November 3, 1999, in the cases of McKnight v. State, 727 So.2d 314 (Fla. 3d DCA 1999), *rev. granted* 740 So.2d 528, and Cotton v. State, 728 So.2d 251 (Fla. 2d DCA 1998), *rev. granted* 737 So.2d 551 (Fla. 1999).

ISSUE II

WHETHER 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 respondent acknowledges that the Second District is in conflict with opinions from other Florida district courts of appeal. Thus, this Court can exercise its discretionary jurisdiction over Petitioner's case.

CONCLUSION

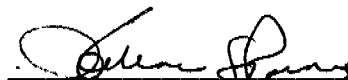
Respondent respectfully requests that this Court grant review in the instant case.

Respectfully submitted,

**ROBERT A. BUTTERWORTH
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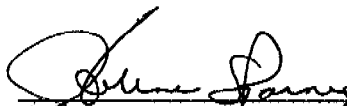


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Robert D. Rosen, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33831 this 26th day of January 2000.



COUNSEL FOR RESPONDENT