IN THE SUPREME COURT OF FLORIDA

MICHAEL KNIGHT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC00-1987

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Michael Knight, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

The record on appeal consists of three volumes. References to Volume I, which contains the pleadings and order filed in this cause, shall by the letter "R." References to consecutively numbered Volumes II (trial transcript) and III (sentencing transcript), shall be by use of the letter "T" followed by the appropriate volume number. "IB" will designate Petitioner's Initial Brief. Each symbol will be followed by the appropriate page number in parentheses.

All emphasis through bold lettering and underscoring is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The State agrees with Petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

The First District Court of Appeal correctly affirmed the life sentence imposed in this case under the Prison Releasee Reoffender Act (hereinafter Act) for the offense of armed robbery. Petitioner was convicted of a first degree felony punishable by imprisonment for a term of years not exceeding life. Section 775.082(8)(a)2.a of the Act unambiguously mandates the imposition of a life sentence for those prison releasee reoffenders who commit felonies punishable by life. The statute does not use the term "life felony" but rather uses the term "felony punishable by life," which includes both life felonies and first degree felonies punishable by a term of years not exceeding life. Petitioner's contrary construction of the Act is defeated by the plain meaning of the statute, would require the statute to be read so as to require an absurd result, is contrary to the meaning of the statute when read *in para materia* with other relevant parts, and would thwart the intent of the enacting legislature.

ARGUMENT

ISSUE I

DID THE TRIAL COURT REVERSIBLY ERR BY SENTENCING PETITIONER TO A LIFE SENTENCE UNDER THE PRISON RELEASEE REOFFENDER ACT FOR THE OFFENSE OF ARMED ROBBERY? (Restated)

Petitioner argues in this appeal that the trial court erred in imposing a life sentence under the Prison Releasee Reoffender Act (Act) for the offense of armed robbery. Petitioner asserts that because he was convicted of a first degree felony punishable by life, and not a life felony, the maximum sentence he could have received under the Act is 30 years. The State respectfully disagrees. Section 775.082(8)(a)2.a., of the Act, provides for the imposition of a life sentence for a felony punishable by life. The statute does not use the term "life felony" but rather uses the term "felony punishable by life," which encompasses both life felonies and first degree felonies punishable by a term of years not exceeding life. Both are felonies "punishable by life." Petitioner was convicted of a first degree felony punishable by imprisonment for a term of years not exceeding life. Thus, the life sentence imposed under section 775.082(8)(a)2.a. is correct.

Statement of the Issue

Effective January 1, 2001, Florida Rule of Appellate Procedure 9.210(b)(5) requires that arguments on each issue include the applicable appellate standard of review for the claimed trial court error. Statements of the issue should be concise, accurate, and scrupulously fair. They should incorporate applicable appellate

standards of review, including preservation or non-preservation of the issue and argument in the trial court, and be neutrally cast to present only the appellate question to be resolved. The State declines to accept Appellant's statement of the issue here because it does not meet these professional criteria.[1]

Preservation

Prior to trial, defense filed a motion contending that the Prison Releasee Reoffender Act was unconstitutional and inapplicable to Petitioner because he was not charged with an enumerated offense. (R. 14-31). At the sentencing hearing, Petitioner raised a general challenge to the constitutionality of the Act. (TIII. 131-132). At no point below, however, did Petitioner assert the claim now raised in this appeal, to wit: that because he was convicted of a first degree felony punishable by life, and not a life felony, the maximum sentence he could have received under the Act is 30 years. The State submits, as previously urged upon the First District Court of Appeal in the instant case, that Petitioner failed to preserve this precise claim of error.

It is well-established that an appeal may not be taken from a judgment or order of a trial court unless a prejudicial error is alleged and is properly preserved, or if not properly preserved

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[1]Fla. R. App. P. 9.210(b)(5); Kneale v. Kneale, 67 So.2d 233 (Fla. 1953); U.S. Sup. Ct. R. 24(1)(a); Robert Stern, APPELLATE PRACTICE IN THE UNITED STATES (2d ed 1989); and Frank E. Cooper, *Stating Issues in Appellate Practice*,49 A.B.A.J. 180 (1963).

would constitute fundamental error. §924.051(3), Fla. Stat. (1997). An issue is properly preserved if the legal argument was timely raised before, and ruled on by, the trial court, and was sufficiently precise that it fairly apprised the trial court of the relief sought and the grounds therefor. Florida Statute §924.051(1)(b). "An appellate court must confine itself to a review of only those questions which were before the trial court and upon which a ruling adverse to the appealing party was made." State v. Barber, 301 So. 2d 7, 9 (Fla. 1974). See also, Larkins v. State, 655 So. 2d 95 (Fla. 1995)(concluding that defendant failed to preserve issue on appeal by failing to make same objection in trial court); Archer v. State, 613 So. 2d 446 (Fla. 1993)(stating that for issue preservation, claim of error must be presented to lower court with specific legal argument or grounds); Steinhorst v. State, 412 So. 2d 332, 338 (Fla. 1982)(stating that in order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception or motion below); Sapp v. State, 411 So. 2d 363, 364 (Fla. 4th DCA 1982) (stating that appellant must bring to appellate court a record that clearly demonstrates trial court's explicit notice of precise grounds of objection).

In the case *sub judice*, not having presented below the claim of error now raised on appeal, Petitioner necessarily failed to obtain a ruling from the trial court thereon. As such, the issue raised in this appeal was unpreserved for purposes of appellate review absent fundamental error. The State submits that the alleged

sentencing error is not fundamental. The Prison Releasee Reoffender Act does not create an illegal sentence, nor does it change the statutory maximum penalty for the criminal offense committed. It simply requires the imposition of a mandatory minimum term for prison releasee reoffenders. Issues of statutory interpretation of the Act are not fundamental error and must be raised in the trial court in order to be preserved at the appellate level. See e.g., Miller v. State, 751 So. 2d 115 (Fla. 1st DCA 2000)(concluding that issue of interpretation of §775.082(8)(a)1.q. could not be raised for the first time on appeal where it was not raised before the trial court and did not constitute fundamental error).

As such, because the claim was not preserved for appellate review and does not constitute fundamental error, the State respectfully requests that this Court deny review.[2]

Standard of Review

Issues of statutory interpretation are reviewed *de novo*. United States v. Veal, 153 F.3d 1233, 1245 (11th Cir. 1998); Racetrac Petroleum, Inc. v. Delco Oil, Inc., 721 So. 2d 376 (Fla. 5th DCA 1998).

[2]The First District Court of Appeal, in its written opinion in the instant case, disposed of the appeal on the merits and did not address the non-preservation issue raised by the State.

Argument

The Florida Legislature has created five categories of felonies: capital felony, life felony, felony of the first degree, felony of the second degree, and felony of the third degree. §775.081(1), Fla. Stat. (1997). Section 775.082 sets forth the maximum statutory penalties which may be imposed for a felony offense:

- A capital felony shall be punished by death or life imprisonment without parole eligibility. §775.082(1).

- A life felony committed prior to October 1, 1983, may be punished by life imprisonment or by a term of imprisonment not less than 30 years. A life felony committed on or after October 1, 1983, may be punished by life imprisonment or by a term of imprisonment not exceeding 40 years. A life felony committed on or after July 1, 1995, may be punished by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. §775.082(3)(a)1-3.

- A first degree felony may be punished by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment. §775.082(3)(b).

- A second degree felony may be punished by a term of imprisonment not exceeding 15 years. §775.082(3)(c).

- A third degree felony may be punished by a term of imprisonment not exceeding 5 years. §775.082(3)(d).

* * *

In 1997, the Florida Legislature passed the Prison Releasee Reoffender Act in 1997. CH 97-239, LAWS OF FLORIDA. The 1997 version of the Act, codified as §775.082(8), Florida Statutes, provides:

> (a)1 "Prison releasee reoffender" means any defendant who commits, or attempts to commit:
>
> a. Treason;
> b. Murder;
> c. Manslaughter;
> d. Sexual battery;
> e. Carjacking;
> f. Home-invasion robbery;
> g. Robbery;
> h. Arson;
> i. Kidnapping;
> j. Aggravated assault;
> k. Aggravated battery;
> l. Aggravated stalking;
> m. Aircraft piracy;
> n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
> o. Any felony that involves the use or threat of physical force or violence against an individual;
> p. Armed burglary;
> q. Burglary of an occupied structure or dwelling; or
> r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, or s. 827.071;
>
> within 3 years of being released from a state correctional facility operated by the Department of Corrections or a private vendor.
>
> 2. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:
>
> a. For a felony punishable by life, by a term of imprisonment for life;
> b. For a felony of the first degree, by a term of imprisonment of 30 years;
> c. For a felony of the second degree, by a term of imprisonment of 15 years; and

d. For a felony of the third degree, by a term of imprisonment of 5 years.

* * *

In the instant case, Petitioner was convicted, as charged, of armed robbery, a first degree felony punishable by life under section 812.13(2)(a), Florida Statutes (1997). See State v. Evans, 693 So. 2d 553 (Fla. 1997); Dues v. State, 716 So. 2d 282 (Fla. 1st DCA 1998); Robinson v. State, 680 So. 2d 481 (Fla. 1st DCA 1996). Contrast, robbery with a weapon, which is a felony of the first degree under §812.13(2)(b), Fla. Stat. (1997). At the sentencing hearing, the State presented evidence to establish that Petitioner qualified under the Act as a prison releasee reoffender, namely that he committed the instant offense within three years of being released from prison. (TIII. 128-134). The trial judge found Petitioner to be a prison releasee reoffender and sentenced him to life imprisonment under the Act for the offense of armed robbery. (TIII. 133-134).

Petitioner argues in this appeal that the trial court erred in imposing a life sentence under the Act for the offense of armed robbery. Petitioner submits (1) that there is no specific sentencing provision under the Act for a conviction for a first degree felony punishable by a term of years not exceeding life, (2) that the term "first degree felony" encompasses first degree felonies punishable by life, and, therefore, under the sentencing provisions of the Act his sentence should have been 30 years, (3) that the Act is ambiguous in regard to first degree felonies

punishable by life as it separately provides that any offense "punishable by life" requires a life sentence while at the same time providing that a felony of the first degree requires a 30 year sentence, and (4) that where the Act presents two possibilities in that armed robbery is punishable by life but is also a felony of the first degree, under the rule of lenity his sentence must be limited to the lesser of the two, to wit: 30 years in prison.

Contrary to Petitioner's arguments, the terms of the Act clearly and unequivocally require the imposition of a life sentence for the offense of armed robbery committed by a prison releasee reoffender. Pursuant to §775.082(8), offenders who fall within the scope of the Act are to be sentenced to the maximum period of incarceration for the applicable felony offenses as provided under §775.082(1)-(3), as minimum mandatory sentences. Stated otherwise, the mandatory minimum term imposed under the Act is the maximum statutory penalty under §775.082(1)-(3). Under this sentencing scheme, first degree felonies punishable by life, and all life felonies, are treated equally. Whereas both carry a statutory maximum penalty of life imprisonment, both are subject to the imposition of life imprisonment under the Act.

Petitioner is incorrect in stating that the Act does not contain a specific sentencing provision for a conviction for a first degree felony punishable by life. The Act clearly states the penalty: "For a felony punishable by life, by a term of imprisonment for life [.]" By using the language "punishable by life," instead of "life felony," the legislature made both life felonies and certain

first degree felonies, such as armed robbery with a firearm, punishable by life. Section 775.082(8)(a)2.a., thus, unambiguously includes both life felonies and first degree felonies punishable by life. Brown v. State, 24 Fla. L. Weekly D2753 (Fla. 1st DCA Dec. 8, 1999).

The rule of lenity, invoked by Petitioner, is the last recourse utilized when interpreting a statute; it only comes into play when the legislative intent cannot be determined. The rule is thus inapplicable where, as here, the language of the statute is clear. Statutes should be interpreted to implement the intent of the legislature, and to cure the evil the statute is designed to correct. See generally, Williams, supra. Jackson v. State, 662 So.2d 1369, 1371 (Fla. 1st DCA 1995): "legislative intent is the polestar by which the court[s] must be guided in statutory construction, even when at odds with the strict letter of the statute," (citing to State v. Webb, 398 So.2d 820, 824 (Fla.1981), internal quotation marks deleted). "It is a basic tenet of statutory construction that statutes will not be interpreted so as to yield an absurd result." Williams v. State, 492 So. 2d 1051, 1054 (Fla. 1986).

It is respectfully submitted that Petitioner's position before this Court expressly requires that the Act be interpreted to yield an absurd result. The clear intent of the legislature through this statute is to deter recently released felons from committing fresh crimes hard upon their release through enhanced penalties for such offenses during the relevant time frame. Petitioner's formulation

would result in a lower, not a higher, penalty for eligible criminals who commit serious first degree felonies. Such a construct is especially disfavored when the relevant segment of the Act is read *in para materia* with section 775.082(3)(b), Fla. Stat. (1997): "For a felony of the first degree, by a term of imprisonment not exceeding 30 years **or, when specifically provided for by statute, by imprisonment for a term of years not exceeding life imprisonment.**" Section 812.13, Fla. Stat. (1997) provides:

> (1) "Robbery means the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.
>
> (2)(a) If in the course of committing the robbery the offender carried a firearm or other deadly weapon, then the robbery is a felony of the first degree, **punishable by imprisonment for a term of years not exceeding life imprisonment** or as provided in s. 775.082, s. 775.083, or s. 775.084.

There is no rational basis upon which the legislature would enact a sentencing scheme, the obvious aim of which is to deter recently released prisoners through enhanced penalties, which provides that offender with a lower maximum penalty than otherwise provided for by statute. In short, Petitioner's construction is defeated by the plain meaning of the statute, would require the statute to be read so as to yield an absurd result, is contrary to the meaning of the statute when read *in para materia* with other relevant parts, and would thwart the intent of the enacting legislature.

In its decision in Knight v. State, 25 Fla. L. Weekly D828 (Fla. 1st DCA Mar. 27, 2000), the First District Court disposed of the Petitioner's arguments in short shrift, stating:

> This court has also found that the term "felony punishable by life" in subsection 775.082(8)(a)(2)(a), Florida Statutes (1997), covers both life felonies and first degree felonies punishable by a term of years not exceeding life. See Brown v. State, 24 Fla. L. Weekly D2753, --- So.2d ----, 1999 WL 1112715 (Fla. 1st DCA Dec. 8, 1999). Thus, the Act requires a life sentence for robbery with a firearm, and the trial court imposed the correct sentence.

Id. The Court in Knight relied upon its earlier decision in Brown v. State, 24 Fla. L. Weekly D2753 (Fla. 1st DCA Dec. 8, 1999). In Brown, the defendant was convicted of armed burglary. He argued that he should have been sentenced to 30 years because his armed burglary conviction is a first degree felony punishable by life, not a life felony. The Court rejected this argument, stating:

> Appellant also challenges his life sentence, asserting that because his armed burglary conviction is a first degree felony punishable by life, not a life felony, the maximum sentence he could have received under section 775.082(8) was 30 years; hence, his life sentence is illegal. In support of his argument, appellant points to Burdick v. State, 594 So.2d 267 (Fla.1992), wherein the Florida Supreme Court designated the following five types of felonies: capital, life, first degree, second degree, and third degree, and stated that first degree felonies punishable by life were first degree felonies regardless of the sentence imposed (life or a term of years). Id. at 268-69. Appellant argues that because he was convicted of a first degree felony, section 775.082(8)(a)(2)(b) provides a maximum sentence of 30 years. We cannot agree.
>
> Subsection 775.082(8)(a)(2)(a) provides for an enhanced life sentence for a "felony punishable by life." The statute does not use the term "life felony," but rather uses the term "felony punishable by life," which includes both life felonies and first degree felonies punishable by life. Because appellant's armed burglary conviction under section 810.02(2)(b), Florida Statutes (1997), is

> a first degree felony punishable by life, the life sentence imposed under section 775.082(8)(a)(2)(a) was legal. In so saying, we are not persuaded by appellant's analogy to the habitual felony offender statute, which at one point did not include an enhancement for life felonies. See Burdick; Lamont v. State, 610 So.2d 435 (Fla.1992). Unlike the habitual felony offender statute, section 775.082(8)(a)(2)(a) unambiguously includes both life felonies and first degree felonies punishable by life.

Brown, 24 Fla. L. Weekly at 2753-54.

Petitioner contends that the First District Court, in so ruling, ignored this Court's holding in Burdick v. State, 594 So. 2d 267 (Fla. 1992), to wit: that there is no separate classification for first degree felonies punishable by life imprisonment. However, the First District Court's interpretation of the language and intent of the Act in no way controverts or impugns that general principle of law as stated in Burdick. The Act, in establishing a like penalty for first degree felonies punishable by life and life felonies, does not create a separate category of first degree felonies punishable by life apart from the general category of first degree felonies, nor does it altogether ignore those first degree felonies punishable by life. The Act simply imposes the maximum penalty allowable under law - - life imprisonment - - upon those qualifying reoffenders who commit those felonies punishable by life (i.e. first degree felonies punishable by life and life felonies). Thus, the First District Court correctly rejected the Burdick analogy argument in its decision in Brown.

The Fifth District Court of Appeal is in accord with the First District Court's statutory interpretation of the Act. See State v. Newmones, 765 So. 2d 860 (Fla. 5th DCA 2000)(vacating sentence for

armed robbery under the Act and remanding with instructions to impose a life sentence); Sullivan v. State, 760 So. 2d 975 (Fla. 5th DCA 2000)(remanding 30-year sentence imposed under Act for armed robbery with directions to impose life sentence). Both decisions make reference to an earlier opinion in State v. Maples, 739 So. 2d 127 (Fla. 5th DCA 1999). In Maples, the Fifth District Court, in affirming the imposition of a life sentence under the Act for burglary with assault or battery, stated:

> The Act's preamble states in pertinent part that, "the Legislature finds the best deterrent to prevent prison releasees from committing future crimes is to require that any releasee who commits new serious felonies [within three years of being released from prison] be sentenced to the maximum term of incarceration allowed by law...." Ch. 97-239, Preamble, at 2795-96, Laws of Fla. **The penalty prescribed for burglary is a term of years not exceeding life imprisonment, and in order to comply with the Act, the trial court was required to impose the most severe penalty allowable, to wit: life imprisonment.** §§ 810.02(2), 775.082(8)(a)2.a., Fla. Stat. (1997).

Id. at 128. *Sub judice*, in the same vein, the penalty prescribed for armed robbery is a term of years not exceeding life imprisonment, and in order to comply with the Act, the trial court was required to impose the most severe penalty allowable, to wit: life imprisonment.

Lastly, but not of least importance, the legislative history of the Act is consistent with this construction. The House Committee On Criminal Justice Appropriations, Committee Substitute for House Bill 1371 (which was eventually enacted as Chapter 97-239), Bill Research and Economic Impact Statement dated April 2, 1997, states at page 5:

B. EFFECT OF PROPOSED CHANGES:

3. Penalties

> Offenders who fall within the scope of this bill will be sentenced to the maximum periods of incarceration for the applicable felony offense as provided under s.775.082, F.S., as minimum mandatory sentences. **Any first degree felony that is punishable by life, is treated as a life felony**. Offenders sentenced under the bill will serve 100% of their sentence with no mechanism for early release, probation, or parole. (Bold emphasis supplied).

As the House report recognizes, the effect of the proposed statute is, essentially, that the mandatory minimum term imposed under the Act is the maximum statutory penalty under §775.082(1)-(3). And, as clearly provided: "Any first degree felony that is punishable by life, is treated as a life felony."

In Knight, the First District Court certified the following question:

> DOES SECTION 775.082 (9)(A)3A, FLORIDA STATUTES (1999), WHICH MANDATES A LIFE SENTENCE FOR PRISON RELEASEE REOFFENDERS WHO COMMIT "A FELONY PUNISHABLE BY LIFE," APPLY BOTH TO LIFE FELONIES AND FIRST DEGREE FELONIES PUNISHABLE BY IMPRISONMENT FOR A TERM OF YEARS NOT EXCEEDING LIFE?[3]

Id. The question was recently re-certified in Gaines v. State, 2000 WL 12012 (Fla. 1st DCA Feb. 14, 2001). The State urges that the certified question be answered in the affirmative.

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[3]Following the 1998 amendments to section 775.082, the Act now appears at subsection (9), with the relevant clause located at §775.082(9)(a)3.a., as cited in the certified question.

CONCLUSION

This Court should discharge discretionary jurisdiction as improvidently granted for either or both of the following reasons: (1) the argument on which certification was based was not preserved in the trial court; (2) the statutory language being challenged is unambiguous and does not meet the jurisdictional criteria for a certified question. See Peterson v. State, 775 So. 2d 376 (Fla. 4th DCA 2001). If, however, the Court elects to exercise its discretionary jurisdiction, the State respectfully submits the certified question be answered in the affirmative, the decision of the District Court of Appeal be approved, and the sentence entered in the trial court be affirmed.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to G. Kay Witt, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, by MAIL on March ____, 2001.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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IN THE SUPREME COURT OF FLORIDA

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Knight v. State, 25 Fla. L. Weekly D828 (Fla. 1st DCA Mar. 27, 2000), question certified on rehearing, 25 Fla. L. Weekly D2025 (Fla. 1st DCA Aug. 22, 2000).

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