

IN THE SUPREME COURT OF FLORIDA

MICHAEL KNIGHT,

Petitioner,

v.

CASE NO. SC00-1987

STATE OF FLORIDA,

Respondent.

_____ /

PETITIONER'S BRIEF ON THE MERITS

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

G. KAY WITT, ESQ.
ASSISTANT PUBLIC DEFENDER
LEON COUNTY COURTHOUSE
SUITE 401
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
(850) 488-2458

ATTORNEY FOR APPELLANT
FLA. BAR NO. 0145009

TABLE OF CONTENTS

	<u>PAGE (S)</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	3
STATEMENT OF THE FACTS	6
SUMMARY OF THE ARGUMENT	9
ARGUMENT	10
<u>ISSUE PRESENTED</u>	
IN LIGHT OF <i>BURDICK V. STATE</i> , HOLDING THAT A SEPARATE STATUTORY CATEGORY OF FIRST DEGREE FELONY PUNISHABLE BY LIFE IS NOT RECOGNIZED IN FLORIDA LAW, THE TERM "FELONY PUNISHABLE BY LIFE" AS USED IN THE PRISON RELEASEE REOFFENDER ACT DOES NOT UNAMBIGUOUSLY REQUIRE A LIFE SENTENCE FOR A FIRST DEGREE FELONY PUNISHABLE BY LIFE WHEN THE ACT ALSO SEPARATELY PROVIDES A SENTENCE OF 30 YEARS FOR THE STATUTORY CATEGORY OF FIRST DEGREE FELONY.	10
CONCLUSION	18
CERTIFICATE OF SERVICE	18
CERTIFICATE OF COMPLIANCE	19
APPENDIX	

TABLE OF AUTHORITIES

PAGE (S)

CASES

Brannon v. Tampa Tribune,
711 So. 2d 97 (Fla. 1st DCA 1998) 13

Brown v. State, 24 Fla. L. Weekly D2753
(Fla. 1st DCA Dec. 8, 1999) 14, 15

Burdick v. State, 594 So. 2d 267 (Fla. 1992) 10, 12-16

Collins Investment Co. v. Metropolitan Dade County,
164 So. 2d 806 (Fla. 1964) 13

Crabtree v. State, 624 So. 2d 743 (Fla. 5th DCA 1993) 11

Deltona Corp. v. Kipnis, 194 So. 2d 295 (Fla. 2d DCA 1966) 13

Green v. State, 630 So. 2d 1193 (Fla. 1st DCA 1994) 11

Knight v. State,
25 Fla. L. Weekly D828 (Fla. 1st DCA Mar. 27, 15

Lamont v. State, 610 So. 2d 435 (Fla. 1992) 16

Perkins v. State, 576 So. 2d 1310 (Fla. 1991) 16

Racetrac Petroleum, Inc. V. Delco Oil, Inc.,
721 So. 2d 376 (Fla. 5th DCA 1998) 12

Robinson v. State, 642 So. 2d 644 (Fla. 4th DCA 1994) 11

Sterling v. State, 584 So. 2d 626 (Fla. 2d DCA) 11

Woods v. State, 740 So. 2d 20 (Fla. 1st DCA 1999) 4

STATUTES

§ 775.021(1) Fla. Stat. (1999) 9, 12, 16

§ 775.081(1), Fla. Stat. (1989) 12

§ 775.082 (8) (a)2.a., Fla. Stat. (1997) 10, 11, 14, 15

§ 775.082, Fla. Stat. (1997) 9, 10

TABLE OF AUTHORITIES

PAGE (S)

§ 775.082(3)(b), Fla. Stat. (1997)	11
§ 775.082(8), Fla. Stat. (1997)	3, 14, 16
§ 775.082(8)(a)2.b., Fla. Stat. (1997)	10, 11
§ 812.13, Fla. Stat. (1997)	10

IN THE SUPREME COURT OF FLORIDA

MICHAEL KNIGHT,

Petitioner,

v.

CASE NO. SC00-1987

STATE OF FLORIDA,

Respondent.

_____ /

PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner was the Defendant in the Criminal Division of the Circuit Court of the Eighth Judicial Circuit, in and for Alachua County, Florida, where he was convicted of the offense of armed robbery. Petitioner was the Appellant in the First District Court of Appeal, and will be referred to in this brief as Petitioner or as Michael Knight. Respondent was the prosecution and Appellee in the lower courts, and will be referred to as State or Respondent.

The record on appeal consists of three volumes. Citations to Volume I, containing copies of the pleadings and orders filed in this cause shall be by the letter "R" followed by the appropriate page number[s] in parentheses. Citations to consecutively numbered Volumes II and III, containing the trial and sentencing transcripts, shall be by the letter "T" followed by the Volume number and the appropriate page number[s] in parentheses. The

March 27, 2000, opinion of the First District Court, and its August 22, 2000, opinion granting rehearing and certification, are attached as an appendix and will be referred to as "App."

STATEMENT OF THE CASE

Petitioner, Michael Knight, was charged by information with armed robbery in Count I, and possession of a firearm by a convicted felon in Count II (R: 7-8). The case proceeded to jury trial on Count I only, and Knight was found guilty of robbery with a firearm as charged (T: II-119, R 138).

Prior to trial, the State filed notice of intent to have Knight sentenced as a prison releasee reoffender (R: 9). Knight filed a motion to dismiss the notice of intent to sentence him pursuant to the Prison Releasee Reoffender Act, Section 775.082(8), Florida Statutes (1997), on grounds that the statute was unconstitutional, and that it was inapplicable in his case because he was not charged with an offense enumerated in the Act (R: 14-31). The motion was denied (T: III-131). The trial judge found that Knight satisfied the requirements of the Prisoner Releasee Reoffender Act and over defense objection sentenced him to life in prison with no possibility of parole (R: 163-167, T: III-133-134).

On direct appeal to the First District Court of Appeal, Petitioner's conviction and sentence were affirmed in an opinion dated March 27, 2000, certifying a question of great public importance regarding the constitutionality of the prison releasee reoffender statute (App.). On March 29, 2000, Petitioner filed a motion for rehearing and certification of a second question of

great public importance, and the State filed a motion to stay the mandate in this case pending a decision by this Court in **Woods v. State**, 740 So.2d 20 (Fla.1st DCA 1999). On May 30, 2000, the First District Court granted the State's motion to stay the mandate, and denied Petitioner's motion for rehearing and certification without prejudice to file again within 15 days of the opinion of this Court in **Woods**. On June 15, 2000, Petitioner again filed for rehearing, asking that the First District certify a question of great public importance not addressed by this Court in **Woods**, regarding ambiguity in the sentencing provisions of the prison releasee reoffender statute.

In its opinion dated August 22, 2000, the First District Court granted Petitioner's Motion for Rehearing and Certification of a Question of Great Public Importance only to the extent that it added the following certified question to its previously issued opinion of March 27, 2000:

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?

(App.).

Notice of intent to seek discretionary review was filed by Petitioner on September 21, 2000. On January 10, 2001, this court issued an order postponing decision on jurisdiction and briefing

schedule, ordering Petitioner to file his initial brief on the merits on or before February 5, 2001; upon Petitioner's motion, the time for filing the initial brief was extended until February 20, 2001. This brief follows.

STATEMENT OF THE FACTS

Cornice Baskerville testified that on August 23, 1998, she was employed as a clerk for the Payless Shoe Store on Northwest 13th Street. On that date, she was working at the store when a black male came in and asked where the kids shoes were located. About twenty minutes later he approached the register with six to eight pairs of shoes and some socks. Ms. Baskerville rang up the items. When she told him the total was \$190.19, the man turned around and pointed a gun at her and at the other customers in the store, and told them this was a robbery. He then told Ms. Baskerville to give him the money from the register and the safe. She complied and gave him the change in a green bag and all the cash and checks from the safe; she estimated that the total amount was two thousand dollars. She said she got a good look at him because he was only standing about three feet from her, and because the lighting in the store that day was very bright (T: II-29-32). Ms. Baskerville made an in-court identification of Mr. Knight (T: II-33); she had previously identified him through a photo lineup (T: 21-22). She identified State's Exhibit "B" as the gun he had used (T: II-36).

Ingrid Dettemyer, the assistant manager at the Payless store on August 23, 1998, testified that when she came back from her lunch break she saw Ms. Baskerville handing the bank bags to "the defendant;" however, the record does not reflect that the witness ever identified Michael Knight as the person to whom she referred.

Ms. Dettemyer went to the back of the store and called the police when she realized what was happening (T: II-38-39).

Several other witnesses testified that they had been shopping in the store that day and they identified Petitioner as the person they had seen taking the money from Ms. Baskerville at gunpoint (T: II-39-47).

Guerian Fort was shopping in the Payless store with his kids. He testified that he saw a black male with a gun "hold up" the clerk and then get into a blue van with another person; Mr. Fort followed the van in his pickup truck and used his camcorder to record the van and the two occupants. Fort could not positively identify Petitioner as the black male he had seen leaving the store and getting into the van (T: II-49-54).

Officer John Nabet with the Gainesville Police Department testified that he received a call concerning the Payless store, and then learned that the robbery suspect had been seen getting into a blue van. He followed the van and saw it roll into a fence and stop; just before the van stopped, he saw a white male running from it (T: II-25-26).

Brett Starr, a crime scene investigator with the Gainesville Police Department, investigated the van as a "secondary crime scene" and inside he found plastic Payless store bags containing boxes of shoes and packages of socks; a handgun was found on the driver's seat (T: II-57-60). On cross-examination, Starr testified

that the gun "had black electrical tape all over it." When he removed the tape, the slide fell off and both the spring and the firing pin were missing. Starr said as far as he was concerned the gun "wouldn't function as a firearm" (T: II-63-64). Starr testified that he lifted latent fingerprints from the exterior of the van and from items found in the van; he also took fingerprints from shoe boxes on the counter inside the Payless store (T: II-57-62).

Melissa Kilmer, a latent fingerprint examiner for the Gainesville Police Department, was offered as an expert and testified that twenty of the latent fingerprints lifted from the van and the store by Mr. Starr matched the known fingerprints of Michael Knight (T: II-67-69).

Officer Nabet was recalled to the stand. He testified that he was a certified firearms instructor, and he was offered as a firearms expert. He testified that in his opinion the gun found in the van was a firearm, and that it was "readily convertible into an object that [would] expel a projectile" (T: II-71-72). On cross-examination he admitted that the gun could not function as a firearm without a firing pin, and while the slide was taped to the rest of the gun. On re-direct, he testified that the gun would fire a projectile if someone first removed the tape, then installed a firing pin, and then placed a bullet in it. On re-cross, he again admitted that without a firing pin, the gun could not be used to fire a projectile (T: II-73-74).

SUMMARY OF THE ARGUMENT

Petitioner was convicted of robbery with a firearm, a felony of the first degree punishable by a term of years not exceeding life. Petitioner was sentenced to life in prison under the prison releasee reoffender act. § 775.082, Fla. Stat. (1997). Under the Act, the penalty for commission of a first degree felony is 30 years, whereas, the penalty for commission of a "felony punishable by life," is life. There is no specific sentencing provision for a conviction for a first degree felony punishable by a term of years not exceeding life. Petitioner argues that the term "first degree felony" encompasses first degree felonies punishable by life, and therefore, under the sentencing provisions of the prison releasee reoffender act his sentence should have been 30 years.

Petitioner further argues that the prison releasee reoffender 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, it provides that a felony of the first degree requires a 30 year sentence. The ambiguity is that Petitioner's offense falls under both definitions. It is punishable by life, but it is also a felony of the first degree. Thus, the statute presents two possibilities, and under the rule of lenity, Petitioner's sentence must be limited to the lesser of the two, 30 years in prison. § 775.021(1) Fla. Stat. (1999).

ARGUMENT

ISSUE PRESENTED

IN LIGHT OF **BURDICK V. STATE**,¹ HOLDING THAT A SEPARATE STATUTORY CATEGORY OF FIRST DEGREE FELONY PUNISHABLE BY LIFE IS NOT RECOGNIZED IN FLORIDA LAW, THE TERM "FELONY PUNISHABLE BY LIFE" AS USED IN THE PRISON RELEASEE REOFFENDER ACT DOES NOT UNAMBIGUOUSLY REQUIRE A LIFE SENTENCE FOR A FIRST DEGREE FELONY PUNISHABLE BY LIFE WHEN THE ACT ALSO SEPARATELY PROVIDES A SENTENCE OF 30 YEARS FOR THE STATUTORY CATEGORY OF FIRST DEGREE FELONY.

Petitioner was convicted of robbery with a firearm, which is a first degree felony punishable by imprisonment for a term of years not exceeding life. § 812.13, Fla. Stat. (1997). The trial court sentenced Petitioner to life in prison under section 775.082, Florida Statutes (1997), the prison releasee reoffender act (T: III-133-134). The prison releasee reoffender act clearly delineates the penalty for commission of a first degree felony as 30 years. § 775.082 (8) (a) 2.b., Fla. Stat. (1997); it also provides a penalty of life in prison for commission of a "felony punishable by life." § 775.082 (8) (a) 2.a., Fla. Stat. (1997). However, there is no specific sentencing provision in the prison releasee reoffender act for a conviction for a first degree felony punishable by a term of years not exceeding life. On appeal, the First District affirmed the sentence imposed by the trial court, finding that the prison releasee reoffender act requires a life sentence for robbery with

¹594 So.2d 267 (Fla.1992).

a firearm (App.).² Conversely, Petitioner contends that because the term "first degree felony" encompasses first degree felonies punishable by life, his sentence under the prison releasee reoffender act should have been 30 years, not life. A "first degree felony punishable by life is not a "life felony." § 775.082(3)(b), Fla. Stat. (1997). **Robinson v. State**, 642 So.2d 644 (Fla. 4th DCA 1994); **Green v. State**, 630 So.2d 1193 (Fla. 1st DCA 1994); **Crabtree v. State**, 624 So.2d 743 (Fla. 5th DCA 1993); *rev. denied*, 634 So.2d 623 (Fla.1994); **Sterling v. State**, 584 So.2d 626 (Fla. 2d DCA), *rev. denied*, 592 So.2d 682 (1991).

Petitioner further contends that the prison releasee reoffender act is ambiguous in regard to first degree felonies punishable by life. It separately provides that any offense "punishable by life" requires a life sentence. § 775.082(8)(a)2.a., Fla. Stat. (1997), but it also provides that a felony of the first degree requires a 30 year sentence. § 775.082(8)(a)2.b., Fla. Stat. (1997). The ambiguity is that Petitioner's offense falls under both definitions. It is punishable by life, but it is also a

²The First District did not recede from this finding when it granted Petitioner's motion for rehearing and certification, however, the court added the following certified question to its previously issued opinion:

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?

felony of the first degree. Thus, the statute presents two possibilities, and under the rule of lenity, Petitioner's sentence must be limited to the lesser of the two, 30 years in prison. § 775.021(1) Fla. Stat. (1999) ("when the language [of a statute] is susceptible of differing constructions, it shall be construed most favorably to the accused."). The issue here is one of statutory construction and judicial interpretation of a Florida statute, and as such is properly subject to review *de novo* by this Court. **Racetrac Petroleum, Inc. V. Delco Oil, Inc.**, 721 So.2d 376, 377 (Fla. 5th DCA 1998) ("[J]udicial interpretation of Florida statutes is a purely legal matter and therefore subject to *de novo* review.[citations omitted]").

Petitioner's argument that his sentence under the prison releasee reoffender act should have been 30 years is further strengthened by the opinion of this Court in **Burdick v. State**, 594 So.2d 267 (Fla.1992), which held that every felony classified as first degree remains in that statutory category, even if legislatively denominated as a first degree felony punishable by life. In **Burdick**, the appellant argued that "in terms of penal policy, there is no difference between a first-degree felony punishable by life imprisonment and a life felony." This Court disagreed, saying, "The legislature has created five categories of felonies: capitol felony; life felony; felony of the first degree; felony of the second degree; and felony of the third degree. §

775.081(1), Fla. Stat. (1989). There is no separate classification for first-degree felonies punishable by life imprisonment." (emphasis added). *Id.* at 268. In a footnote, this Court further explained, "We use the terms 'punishable by life,' 'punishable by life imprisonment,' and 'punishable by a term of years not exceeding life imprisonment,' synonymously, as distinguished from a 'life felony.'" *Id.* at 268, note 5.

Additionally, it is a well established principle of statutory construction that the legislature is presumed to know the judicial constructions of a law when enacting a new version or amendment to that law. *Brannon v. Tampa Tribune*, 711 So.2d 97 (Fla. 1st DCA 1998) (citing *Collins Investment Co. v. Metropolitan Dade County*, 164 So.2d 806 (Fla.1964)). Furthermore, the legislature is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed in the new version. *Brannon v. Tampa Tribune*, 711 So.2d 97 (Fla. 1st DCA 1998) (citing *Deltona Corp. v. Kipnis*, 194 So.2d 295 (Fla. 2d DCA 1966)). Therefore, in the present case, the legislature should be presumed to have adopted the established judicial construction that the term "first degree felony" includes "first degree felonies punishable by a term of years not exceeding life." *Burdick*, 594 So.2d at 268-269 (a first degree felony remains in that statutory classification, "regardless of the sentence imposed by the substantive law prohibiting the conduct.") (emphasis added). This logically leads to

the conclusion that the term "felony punishable by life," as used in section 775.082(8)(a)2.a., refers to "life felonies," and means something other than "first degree felonies punishable by life." If the legislature did not intend this construction, it would have used the term "first degree felonies punishable by life," in section 775.082(8)(a)2.a., Florida Statutes, the prison releasee reoffender act.³

The First District, in ruling that Petitioner was not entitled to relief here, relied upon its earlier decision in **Brown v. State**, 24 Fla. L. Weekly D2753 (Fla. 1st DCA Dec. 8, 1999). In that case, the appellant challenged his life sentence for armed burglary, a first degree felony punishable by life, asserting that the maximum sentence he could have received under section 775.082(8) was 30 years. The appellant relied on **Burdick**, in which this Court 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." **Brown**, 24 Fla. L. Weekly

³It should also be noted that, within this same statute, the legislature set forth language in which it distinguished between life sentences and sentences of imprisonment for a term of years not exceeding life. Section 775.082(3)(a)3., Florida Statutes, provides that the penalty for a life felony committed on or after July 1, 1995, is "a term of imprisonment for life or by imprisonment for a term of years not exceeding life." (emphasis added).

D2753.⁴ The First District stated in **Brown** that it was not persuaded by the appellant's "analogy" to the habitual offender statute, which at one point did not include an enhancement for life felonies," as discussed in **Burdick**, and held that the statute at issue here, section 775.082(8)(a)(2)(a), "unambiguously includes both life felonies and first degree felonies punishable by life." **Brown**, 24 Fla. L. Weekly D2753. In so ruling, it appears that the lower court ignored the holding of **Burdick** that, "There is no separate classification for first-degree felonies punishable by life imprisonment." **Burdick**, 594 So.2d at 268. Only by ignoring that holding could the district court possibly say that there is no ambiguity present where a statute provides that an offense is both punishable by life and a first degree felony. **Burdick** makes patent the ambiguity, since the statute at issue refers to two separate categories: one category, a felony punishable by life, which admittedly allows a life sentence, and another statutory category

⁴The Fifth District in **State v. Newmones**, 765 So.2d 860 (Fla. 5th DCA 2000), has also held that the prison releasee reoffender act mandates a life sentence for robbery with a firearm, "considering that the crime is a 'felony punishable by life.'" **Id.** at 861, citing to the opinions of the First District in this case, **Knight v. State**, 25 Fla. L. Weekly D828 (Fla. 1st DCA Mar. 27, 2000), and **Brown v. State**, 24 Fla. L. Weekly D2753 (Fla. 1st DCA Dec. 8, 1999).

Additionally, the issue of the penalty under the prison releasee reoffender act for first degree felonies punishable by a term of years not exceeding life is currently before this Court in **Michael Brown v. State**, SC99-102, and **Erron Bing v. State**, SC00-151.

referring to felonies of the first degree, which limits the sentence to 30 years. The latter construction is entirely consistent with **Burdick**, which does not recognize a separate category of first degree felony punishable by life. Thus, under the prison releasee reoffender act, the choices are limited to life felonies and first degree felonies, nothing in between. The statutory ambiguity cannot be denied. When the wording of a statute is ambiguous, it must be construed in the manner most favorable to the accused. **Perkins v. State**, 576 So.2d 1310, 1312 (Fla.1991); **Lamont v. State**, 610 So.2d 435 (Fla.1992).

This Court should therefore find that the penalty provisions of section 775.082(8) are ambiguous with regard to first degree felonies punishable by life in that they present two conflicting possibilities: an offense "punishable by life" requires a life sentence, while a felony of the first degree requires a 30 year sentence. Thus, applying the rule of statutory construction where any ambiguity inures to the Petitioner's benefit, section 775.021(1), Florida Statutes (1997), this Court should find that under the prison releasee reoffender act the sentence for robbery with a firearm is 30 years.⁵

⁵Moreover, applying the holding of **Burdick** that a separate statutory category of first degree felony punishable by life is not recognized in Florida law, this Court should likewise find that Petitioner was incorrectly sentenced to life in prison under the prison releasee reoffender act for committing a first degree felony.

Accordingly, this Court should find that the First District has incorrectly interpreted the prison releasee reoffender act as unambiguously requiring a life sentence for first degree felonies punishable by life, and answer in the negative the question certified by that court in this case.

CONCLUSION

Based upon the foregoing Argument and the authorities cited therein, Petitioner urges the Court to quash the opinion of the First District Court of Appeal and find that the prison releasee reoffender act does not unambiguously require a life sentence for first degree felonies punishable by life. Petitioner respectfully requests that the Court vacate his sentence and remand for resentencing.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER

G. KAY WITT, ESQ.
Assistant Public Defender
Florida Bar No. 0145009
Leon Co. Courthouse, Ste. 401
301 South Monroe Street
Tallahassee, Florida 32301
(850) 488-2458
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing has been furnished by delivery to Terri Leon-Benner, Assistant Attorney General, The Capitol, Plaza Level, Tallahassee, Florida 32301, on this ____ day of February, 2001.

G. KAY WITT, ESQ.

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief has been prepared using 12 point Courier New, a font that is not proportionately spaced.

G. KAY WITT, ESQ.