

IN THE SUPREME COURT OF FLORIDA

MICHAEL KNIGHT,

Petitioner,

v.

CASE NO. SC00-1987

STATE OF FLORIDA,

Respondent.

PETITIONER'S REPLY BRIEF ON THE MERITS

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§ 775.084, Fla. Stat. 3

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_____ /

PETITIONER'S REPLY BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner relies on his preliminary statement as presented in his initial brief, with the following additions: reference to Respondent's answer brief will be by the symbol "AB" followed by the appropriate page number[s] in parentheses, and the symbol "IB" will denote references to Petitioner's initial brief.

STATEMENT OF THE CASE

Petitioner relies on his statement of the case as presented in his initial brief.

STATEMENT OF THE FACTS

Petitioner relies on his statement of the facts as presented in his initial brief.

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.

The above is the statement of the issue raised and argued by Petitioner in his initial brief (IB-10). Under Florida law, the term "first degree felony" encompasses first degree felonies punishable by a term of years not exceeding life, as distinguished from life felonies. The Prison Releasee Reoffender Act provides that the punishment for "felonies punishable by life" is life in prison; the Act separately provides that the sentence for first degree felonies is thirty years in prison. Consequently, the Prison Releasee Reoffender Act is ambiguous with regard to first degree felonies punishable by life, and, as such, is invalid on its face. Thus, the issue on appeal is Petitioner's challenge to the facial validity of the Prison Releasee Reoffender Act.² Accordingly,

¹594 So.2d 267 (Fla. 1992).

²The issue is that the ambiguous language of the Prison Releasee Reoffender Act renders it invalid. Thus, the issue is the invalidity of a statute under which Petitioner received an unlawful life sentence, not, as incorrectly presented by Respondent in its "restatement," the trial court's act in imposing that sentence (AB-3-4).

Respondent's assertions concerning lack of preservation are without merit (AB-4-6).

Petitioner challenges the Prison Releasee Reoffender Act, not with regard to the factual application of that statute to his case, but rather, as to the facial validity of the statute itself. The issue thus falls within the definition of fundamental error as a matter of law. *Johnson v. State*, 616 So.2d 1, 3-4, (Fla. 1993). In *Johnson*, this Court considered whether a challenge to the habitual felony offender statute, section 775.084, constituted a fundamental error which could be raised for the first time on appeal. The Court reviewed the statute at issue and determined that it affected "a quantifiable determinant of the length of sentence that may be imposed on a defendant," and thus allowed a trial court to impose "a substantially extended term of imprisonment" on those defendants who were deemed qualified under the statute. The Court held that the statute involved "fundamental 'liberty' due process issues," and therefore the issue was a question of fundamental error which could be raised on appeal, even though it had not been raised in the trial court. *Id.*

In the instant case, Petitioner challenges the facial validity of the Prison Releasee Reoffender Act which, like the habitual felony offender statute, clearly affects the length of the sentence imposed upon a qualified defendant. Moreover, the Prison Releasee Reoffender Act requires that trial courts impose substantially

extended prison sentences on defendants who are found qualified for sentencing under that statute. Accordingly, Petitioner challenges as fundamental error, his sentence of life in prison imposed pursuant to a facially invalid statute, specifically, the ambiguous language of the Prison Releasee Reoffender Act with regard to felonies punishable by life.

Additionally, Respondent's assertion that this Court should discharge discretionary jurisdiction because "the argument on which certification was based was not preserved in the trial court" is likewise without merit (AB-17). In *Trushin v, State*, 425 So.2d 1126 (Fla. 1982), when presented with several issues that had not been preserved in the trial court, but which had been ruled on and certified by the district court, this Court stated:

While we may disagree on whether these issues should have been considered as having been waived, the district court had the authority to consider them and found them important enough to certify to this Court. Therefore, we will exercise our jurisdiction and discuss the certified issues.

Id. at 1130.

Petitioner relies on his argument as stated in his initial brief for further argument on this issue.

CONCLUSION

Based upon the foregoing Argument and the authorities cited therein, Petitioner urges that the Court quash the opinion of the First District Court of Appeal, answer the question certified by that court in the negative, 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,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing has been furnished by delivery to Anne C. Toolan, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Tallahassee, Florida, 32301, and by U. S. Mail to appellant, Michael Knight, #B817395, on this _____ day of April, 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.