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IN THE SUPREME COURT OF FLORIDA

REGINALD FRAZIER, :

Petitioner, :

vs.

STATE OF FLORIDA,

Case No. SC00-2198

Respondent

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

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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ATTORNEYS FOR PETITIONER

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NUMBER</u>
Table of Citations	2
Statement of Facts and of the Case	3
Issue	4
Summary of Argument	4
Argument	
Does the Second District's Opinion in <u>Frazier v. State</u> , Case No. 99-04293 (Fla. 2nd DCA September 27, 2000) expressly declare valid a state statute or construe a provision of the state or federal constitution?	5
Conclusion	7
Certificate of Service	7
Appendix	8

TABLE OF CITATIONS

<u>ITEM</u>	<u>PAGE NUMBER</u>
<u>Cotton v. State</u> , 25 FLW S 463 (Fla. 2000)	4, 5
<u>Grant v. State</u> , 745 So. 2nd 519 (Fla. 2nd DCA 1999)	3, 5
<u>Lasky v. State Farm Insurance Co.</u> , 296 So. 2nd. 9 (Fla. 1974)	6
<u>Rochin v. California</u> , 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed 2nd 183 (1952)	5
<u>Soverino v. stats</u> , 356 So, 2nd 269 (Fla. 1978)	6
Sec. 775.08(8) Fla. Stat. (1997)	5

STATEMENT REGARDING TYPE

Petitioner's Brief on Jurisdiction is prepared in Courier 12 point type.

STATEMENT OF THE CASE AND OF THE FACTS

Petitioner was charged with robbery, grand theft, resisting detention in retail theft, and battery for incidents allegedly occurring on December 12, 1998. After a jury trial, Petitioner was convicted of all three counts. Petitioner was sentenced to 15 years in prison under the prison releasee reoffenders act on the robbery charge, An appeal to the district court, alleging the

unconstitutionality of the prison ~~releasee~~ reoffenders act timely followed. On September 27, 2000 the district court affirmed the judgment and sentence, citing its own recent decision in Grant v. State, 745 So. 2nd 519(Fla. 2nd DCA 1999) and this court's recent decision in Cotton v. State, 25 FLW S 463(Fla. 2000).

ISSUE

Does the Second District's Opinion in Frazier v. State, Case No. 99-04293 (Fla. 2nd DCA September 27, 2000) expressly declare valid a state statute or expressly construe a provision of the state or federal constitution?

SUMMARY OF ARGUMENT

The opinion of the district court expressly construed various provisions of the federal and state constitutions, dealing with equal protection of the laws, due process, and cruel and/ or unusual punishment. In so doing, the district court expressly declared a state statute to be valid. This court has, pending at the time of this petition, several other cases involving the constitutional attacks on the specific enactment that is at issue in this cause.

ARGUMENT

A. The Cruel and/or Unusual Punishment Issue

One argument that may not have been raised in Cotton or Grant, supra., is that the Prison ~~Releasee~~ Reoffender Act violates the proportionality concepts of cruel and unusual punishment clause by the manner in which defendants are classified as prison ~~releasee reoffenders~~. Sec. 775.082(8) Fla. Stat. (1997) defines a reoffender as a person who commits an enumerated offense within three years of having been released from a correctional facility of the state of Florida. By this definition, the Act draws a distinction between defendants who commit an offense after having been released from this state's prison system, and those who have been in some other prison system, such as the federal system or the prison system of another state. Petitioner urges this court to accept jurisdiction of this cause to review the validity of the act under the cruel and/or unusual punishment prohibitions in the state and federal constitutions.

B. The Due Process Issue

Substantive due process is a restriction upon the manner in which a penal code may be enforced. Rochin v. California, 342 U.S. 145, 72 S.Ct. 205, 96 L.Ed. 2nd 183 (1952). The test is whether the statute bears a reasonable relation to a permissible legislative objective, and is not

discriminatory, arbitrary, or oppressive, Lasky v. State Farm Insurance Co., 296 So. 2nd. 9 (Fla. 1974). The Prison Releasee Reoffender Act violates state and federal guarantees in a number of ways. As has already been pointed out, the Act makes a number of arbitrary and capricious distinctions. They include distinctions between defendants who have been released from Florida prisons and those who have been released from other prisons. It is submitted this distinction bears no rational relationship to the stated purpose. or indeed, any legitimate purpose, of the act, Since the Act does not rationally relate to the stated purpose. it does not withstand scrutiny under the due process analysis, and Petitioner requests that this court review this aspect of the case.


C. The Equal Protection Issue

The constitutional standard by which most statutory classifications are examined is whether the classification is based on some difference bearing a reasonable relationship to the purpose of the legislation, Soverino v. State, 356 So. 2nd 269 [Fla. 1978). As has been stated previously, the classifications established by the act are not rational. It is not rational to make a distinction based on where a particular defendant has previously served a prison sentence. Since the classifications are not rational, they are void. This cause should be reviewed on that basis.

CONCLUSION

Petitioner requests that this Honorable Court accept jurisdiction of this matter, and the Prison Releasee Reoffenders Act to be unconstitutionally void.

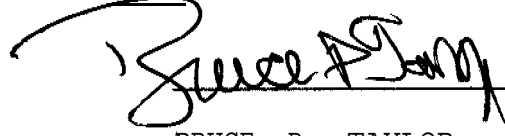
Respectfully Submitted:



BRUCE P. TAYLOR
Assistant Public Defender

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the Office of the Attorney General at 2002 North Lois Ave., Tampa, Fl. 33607 on this the 17 Day of October, 2000.



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APPENDIX

P

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

REGINALD FRAZIER,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)

CASE NO. 2D99-4293

Opinion filed September 27, 2000.

Appeal from the Circuit Court for Sarasota
County: Robert W. McDonald, Jr. and
Stephen Dakan, Judges.

James Marion Moor-man, Public Defender,
Bar-tow,
and
Kendra D. Presswood, Special Assistant
Public Defender, Law Office of Kendra
D. Presswood, P.A., Bradenton, for
Appellant.

Robert A. **Butterworth**, Attorney General,
Tallahassee, and Ronald Napolitano,
Assistant Attorney General, Tampa,
for Appellee.

FULMER, Judge.

Reginald Frazier appeals the sentence imposed for robbery, challenging
the constitutionality of the Prison Releasee Reoffender statute, on several grounds.

Because the issues he raises are controlled by Cotton v. State, 25 Fla. L. Weekly S463

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(Fla. June 15, 2000) and Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999), review granted, 761 So. 2d 329 (Fla. 2000), we affirm.

ALTENBERND, A.C.J. and BLUE, J., Concur.