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IN THE SUPREME COURT OF FLORIDA

FILED
THOMAS D. HALL
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BY _____

MARK LUNDY,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

Case No. 5000-2199

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

JURISDICTIONAL BRIEF OF RESPONDENT

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 2000) BECAUSE THAT DECISION EXPRESSLY DECLARES
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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

The opinion of the Second District Court of Appeal, a copy of which is appended to Petitioner's Brief on Jurisdiction, outlines the relevant facts at this stage of the proceedings.

SUMMARY OF THE ARGUMENT

This Court has discretionary jurisdiction to review the decision of the Second District Court of Appeal in Lundy v. State, No. 2D99-1892 (Fla. 2d DCA September 29, 2000) because it specifically upheld the validity of the Prison Releasee Reoffender Act against a constitutional attack. This Court should, nevertheless, deny review in this case because the legal argument raised by the petitioner - whether the PRR Act violates the constitution because it applies only to those who reoffend within three years of their release from Florida prisons and not other prison systems - although not specifically addressed in this Court's earlier decision in Cotton v. State, 25 Fla. Weekly (S)689 (Fla. Sept. 14, 2000) *revised opinion*, was briefed by the parties; and this Court's opinion in Cotton, *id.*, by its silence regarding that argument, has implicitly rejected it.

ARGUMENT

WHETHER THE FLORIDA SUPREME COURT SHOULD GRANT DISCRETIONARY REVIEW OF THE DECISION OF THE SECOND DISTRICT COURT OF APPEALS IN THE CASE OF LUNDY V. STATE, NO. 2D99-1892 (FLA. 2D DCA SEPTEMBER 29, 2000) BECAUSE THAT DECISION EXPRESSLY DECLARES VALID A STATE STATUTE (THE PRISON RELEASEE REOFFENDER ACT) OR EXPRESSLY CONSTRUES A PROVISION OF THE STATE OR FEDERAL CONSTITUTION (RESTATED).

Respondent acknowledges that this Court has discretionary jurisdiction pursuant to Art. V. §3(b)(3), Fla. Const. and Fla. R. App. Pro. 9.030(a)(2)(A)(I)(ii) (2000) to review the decision of the Second District Court of Appeals in the case of Lundy v. State, NO. 2D99-1892 (Fla. 2d DCA September 29, 2000) because that court passed upon the validity of the Prison Releasee Reoffender Act, §775.082(8), Fla. Stat. (1997), when attacked on constitutional grounds alleging violation of due process and equal protection. The Second District ruled that that these guarantees were not violated due to the fact that the PRR statute applied only to defendants who committed enumerated offenses within three years of release from a Florida prison and not to defendants released from other prison systems. *Id.* at page 2. The Second District noted that, "Lundy argues that the Act facially offends substantive due process and equal protection guarantees based upon a shortcoming

not expressly addressed in Grant¹ or Cotton²." Lundy, *supra* at page 2.

This Court did not directly express its opinion as to whether petitioner's constitutional rights of due process and equal protection, as well as the prohibition against cruel and unusual punishment, are violated because the PRR Act only applies to offenders who committed designated offenses within three years of their release from Florida prison and not offenders released from other prison systems. However, this Court rejected these constitutional claims based upon other asserted legal arguments. Respondent would point out that the arguments presented by the petitioner sub judice was raised in the Cotton answer brief at pages 18 and was addressed in the state's reply brief at page 13 (copies of said briefs are attached to this jurisdictional brief). This Court has already implicitly rejected this legal argument by not addressing it in its decision in Cotton, *supra*, even though the claim was briefed by the parties in that case. This Court should deny discretionary review in this case.

¹Grant v. State, 745 So.2d 519 (Fla. 2d DCA 1999), *rev. granted* No. SC99-164 (Fla. Apr. 12, 2000).


²Cotton v. State, 25 Fla. L. Weekly (S)689 (Fla. Sept. 14, 2000) *revised opinion*.

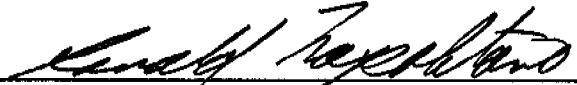
CONCLUSION

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

Respectfully submitted,

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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 Bruce P. Taylor, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33831-9000, this ~~24th~~^{25th} day of October, 2000.


COUNSEL FOR RESPONDENT

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INDEX TO APPENDIX OF EXHIBITS

COMES NOW the Attorney General, by and through the undersigned Assistant Attorney General, who files this Appendix wherein Appellee has tabbed the first page of every appendix document and cross-referenced the index tab number to the appropriate item on the index:

Exhibit A Opinion, 2DCA 99-1862, September 29, 2000
Exhibit B Petitioner's Reply Brief on the Merits
Exhibit C Answer Brief of Respondent on the Merits