

IN THE SUPREME COURT OF FLORIDA

ROBERT MEDINA, :  
 :  
 Petitioner, :  
 :  
 vs. : Case No. SC00-279  
 :  
 STATE OF FLORIDA, :  
 :  
 Respondent. :  
 :  
 \_\_\_\_\_ :

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

REPLY BRIEF OF PETITIONER ON THE MERITS

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TENTH JUDICIAL CIRCUIT

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I certify the size and style of type used in this brief is Courier 12 point, a font that is not proportionally spaced.

## ARGUMENT

### ISSUE I

THE PRISON RELEASEE REOFFENDER ACT  
CANNOT BE APPLIED TO THE BURGLARY  
OF AN UNOCCUPIED DWELLING.

Although Respondent argues that the word "or" when used in a statute is generally to construed in the disjunctive, it is equally true that this is not always the case. It is also equally true that the word "or" must be construed as the copulative conjunction "and" in many situations. Pompano Horse Club Inc. v. State, 111 So. 801 (Fla. 1927); Dotty v. State, 197 So. 2d 315 (Fla. 4th DCA 1967). The debate over the construction of the word "or" misses the point. The real issue presented by this case is whether the word "occupied" modifies only the word "structure" or whether the word "dwelling." is also modified

Petitioner agrees with the general proposition that legislative intent is the polestar used to guide in the interpretation of a statute. As this Court summarized in McLaughlin v. State, 721 So. 2d 1170, 1172 (Fla. 1998):

[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.

Further, the courts of this state are without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.

McLaughlin, 721 So. 2d at 1172.

However, the problem in the present case is that the statute does not convey a clear and unambiguous meaning. The language used section 775.082(8)(a)1.g, Florida Statutes (1997) is ambiguous because it is susceptible to two constructions:

- 1)Burglary of an occupied structure or occupied dwelling.
- 2)Burglary of occupied structure, and any dwelling, whether or not occupied.

Petitioner disagrees with Respondent's argument that the rule requiring strict construction of criminal statutes must yield to the rule that the intent of the legislature be given effect. When a criminal statute is ambiguous as in the present case, other rules of statutory construction must be subordinated to construe the statute in favor of the accused. See Lamont v. State, 610 So. 2d 435, 437-438 (Fla. 1992); Arthur v. State, 391 So. 2d 338, 339 (Fla. 4th DCA 1980). Because the legislature failed to clearly define the statute, the legislative intent is unclear as to whether the statute was meant to apply to the burglary of an unoccupied dwelling.

Thus, the ambiguity must be construed in favor of Petitioner and this Court should hold that the burglary of an unoccupied dwelling is not a qualifying offense under the Prison Releasee Reoffender Act. Moreover as argued in Petitioner's Initial Brief on the Merits, the preamble to the statute and the legislative history demonstrate an intention to punish repeat offenders who commit crimes involving the risk of harm to a person.

As noted by this Court in McLaughlin, when a criminal or penal statute is being construed, the rules are stricter. McLaughlin, 721 So. 2d at 1172. "[I]t is a well established canon of construction that words in a penal statute must be strictly construed. Where words are susceptible of more than one meaning they must be construed most favorable to the accused." Id. (quoting State v. Camp, 596 So. 2d 1055, 1056 (Fla. 1992)).

The requirement that criminal statutes are to be strictly construed is based on principles of due process. As this Court explained in Perkins v. State, 576 So. 2d 1310 (Fla. 1991):

One of the most fundamental principles of Florida law is that penal statutes must be strictly construed according to their letter. This principle ultimately rests on the due process requirement that criminal statutes must say with some precision exactly what is prohibited. Words and meanings beyond the literal language may not be entertained nor may vagueness become a reason for broadening a penal statute.

Indeed, our system of jurisprudence is founded on a belief that everyone must be given sufficient notice of those matters that may result in a deprivation of life, liberty, or property. For this reason, [a] penal statute must be written in language sufficiently definite, when measured by common understanding and practice, to apprise ordinary persons of common intelligence of what conduct will render them liable to be prosecuted for its violation.

Elsewhere, we have said that [s]tatutes criminal in character must be strictly construed. In its application to penal and criminal statutes, the due process requirement of definiteness is of especial importance. Thus, to the extent that definiteness is lacking, a statute must be construed in the manner most favorable to the accused.

Perkins, 576 So. 2d at 1312-1313 (citations omitted).

Section 775.082(8)(a)1.g, Florida Statutes (1997) is ambiguous as to whether burglary of an unoccupied dwelling is a qualifying offense for enhanced punishment under the Prison Release Reoffender Act. Therefore, this Court should construe the statute in favor of Petitioner and hold that burglary of an unoccupied dwelling is not a qualifying offense.



ISSUE II

SECTION 775.082(8), FLORIDA STAT-  
UTES (1997), THE PRISON RELEASEE  
REOFFENDER ACT IS UNCONSTITUTIONAL.

Petitioner will rely on the argument and authorities in his  
initial brief on this issue.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Ronald F. Napolitano, Assistant Attorney General, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this \_\_\_\_\_ day of May, 2002.

Respectfully submitted,

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