

TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
ARGUMENT	1
ISSUE I	
THE TRIAL JUDGE IMPOSED TWO SEPARATE SENTENCES FOR THE SAME OFFENSE IN VIOLATION OF THE DOUBLE JEOPARDY PROHIBITION AGAINST MULTIPLE PUNISHMENTS FOR THE SAME OFFENSE.	1
ISSUE II	
SECTION 775.082(8), FLORIDA STATUTES (1997), THE PRISON RELEASEE REOFFENDER ACT, IS UNCONSTITUTIONAL.	3
CERTIFICATE OF SERVICE	4

TABLE OF CITATIONS

CASES

PAGE NO.

Moreland v. State,
590 So. 2d 1020 (Fla. 2d DCA 1991), rev. den., 599 So. 2d 657
(Fla. 1992) 2

Perkins v. State,
576 So. 2d 1310 (Fla. 1991) 1, 2

OTHER AUTHORITIES

§ 775.082(8), Fla. Stat. (1997) 3

TABLE OF CITATIONS (continued)

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ARGUMENT

ISSUE I

THE TRIAL JUDGE IMPOSED TWO SEPARATE SENTENCES FOR THE SAME OFFENSE IN VIOLATION OF THE DOUBLE JEOPARDY PROHIBITION AGAINST MULTIPLE PUNISHMENTS FOR THE SAME OFFENSE.

As argued in Petitioner's Initial Brief On The Merits, the statute at issue is ambiguous. Without a clear expression of intent by the legislature to allow a criminal defendant to be sentenced as a habitual offender and as a prison releasee reoffender, a criminal defendant may be sentenced under only one of these enhanced sentencing statutes.

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).

In the absence of a clear expression by the legislature to permit multiple sentences, Petitioner may only be sentenced to one sentence. In Moreland v. State, 590 So. 2d 1020 (Fla. 2d DCA 1991), rev. den., 599 So. 2d 657 (Fla. 1992), the Second District was presented with both guidelines and habitual offender sentences imposed on the same offense. In reversing, the Court did not specifically rely upon double jeopardy principles, but found "alternative sentences" impermissible. This rationale is also applicable to the sentences at bar.

ISSUE II

SECTION 775.082(8), FLORIDA STATUTES
(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

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