ORIGINAL

IN THE SUPREME COURT OF FLORIDA

PHILLIP GRIMES. :

Petitioner, :

vs.

STATE OF FLORIDA, : Case No. scoo-350

Respondent. :

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

SECOND AMENDED BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

BRUCE P. TAYLOR
Assistant Public Defender
Fla. Bar No. 224936

Public Defender's Office
Polk County Courthouse

P.O. Box 9000-- Drawer PD
Bartow, Fl. 33831
(863) 534-4200

ATTORNEYS FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

C. Other Authority

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 committing an involuntary sexual battery with force likely to cause death or serious injury, a life felony. He was tried, and found guilty as charged. Petitioner was sentenced to life in prison under the prison releasee reoffanders act. Had Petitioner been sentenced under applicable guidelines, he would have received between 188.4 months and 314 months incarceration. An appeal to the district court, alleging the unconstitutionality of the prison releasee reoffenders act timely followed, On December 22, 1999 the district court affirmed the judgment and sentence, citing its own recent decision in Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2nd DCA 1999). A motion for rehearing was timely filed, but denied on January 28, 2000.

ISSUE

Does the Second District's Opinion in Grimes v. ____, Case No, 98-04429 (Fla. 2nd DCA December 22, 1999) 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, by incorporating Grant, expressly construed various provisions of the federal and state constitutions, dealing with equal protection of the laws, due process, cruel and/ or unusual

punishment, and the state constitutional prohibition against having more than a single subject in a legislative act. 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 "Log-Rolling" Question

Article III, Sec. 6 of the Constitution of the State of Florida requires that legislation be passed containing only a single subject. Sac. 775.08(8) Fla. Stat. (1997), the Prison Releasee Reoffender Act under which Petitioner was sentenced, was contained in Ch. 97-239 Laws of Florida, which became effective on May 30, 1997. Curiously, that entire law is entitled the Prison Releasee Reoffender Act, although of the six sections of the chapter, Sections 4, 5, and 6 are not part of what is generally considered to be the act, Those sections create statutes dealing with whether a youthful offender should be committed to the custody of the Department of Corrections, whether a court can place a person on community control or probation if the person is a substance abuser. and who may take a person into custody for violation of probation or community control. The opinion of the district court in Grant, supra., and, by reference, in this cause, expressly rejected the argument that these three

Statutory enactments, contained within the same legislation that created the Prison Releasee Raoffender statute, violated that state constitutional prohibition. The subject matter of the various sections of Ch. 97-239 Laws of Florida is linked only in the most general category of criminal law and therefore violates the prohibition against so called "log-rolling". This cause should be reviewed on that basis.

B. The Cruel and Unusual Punishment Issue

The Eighth Amendment of the United States Constitution forbids the imposition of a sentence that is cruel and unusual. The Florida Constitution, Article I. Sec. 17 forbids the imposition of a punishment that is either cruel or unusual. Both the federal and state constitutional prohibitions against cruel and/or unusual punishments prohibit sentences that are disproportionate to the crime committed. Solem v. Helm, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed. 2nd 637 (1983); overruled in Harmelin v. Michigan, 501 U.S. 957, 121 S. Ct, 2680, 115 L.Ed. 2nd 836 (1991). Hale v. State, 630 So. 2nd 521 [Fla. 1993). cert denied 513 U.S. 909, 115 S.Ct. 278, 130 L. Ed. 2nd 145 (1994) and Williams v. State, 630 So. 2nd 534 (Fla. 1993). The district court's opinion in this cause again, by adopting Grant, supra., expressly rejected arguments that the prison releasee reoffenders act violated these principles,

One argument that was advanced in the district court in this cause, but which may not have been raised in Grant,

supra., and which may not have yet been made in this court, 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. More disturbingly, there is no requirement that the defendant who is to be punished under the act be guilty of any previous offense, since the act makes no distinction between those who are released from the Florida prison system after having served their sentences, and those who were released when their convictions were reversed on appeal, when they were pardoned, or when new evidence revealed that they were innocent of the crimes for which they were first incarcerated.

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,

C. The Double Jeopardy Issue

The double jeopardy clause protects against multiple punishments for the same offense. North Carolina v. Pearce, 395 U.S. 711, 89 S. Ct. 2072, 23 L.Ed. 2nd 656 (1969) and Ohio v. Johnson, 467 U.S. 493, 104 S.Ct. 2536, 81 L.Ed. 2nd 425 (1984). The opinion of the district court rejected the argument that the double jeopardy prohibitions in the state and federal constitutions were violated by the act. Petitioner urges this court to accept jurisdiction to review those issues.

D. The Overbreadth Issue

Legislation that punishes innocent conduct, even as part of a plan or scheme, the overall purpose of which is of legitimate public concern, is ovarbroad, Delmonico v. State, 155 So. 2nd 368 [Fla. 1963) and Brandenburg v Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed. 2nd 430 (1969). As previously mentioned. the Prison Releasee Reoffender Act makes no distinction between persons released from a Florida prison merely because they have done their time, and those who are released because there convictions were somehow overturned. Hence, the innocent act of being wrongfully convicted and sentenced to prison is punished by the Act in the form of imposing a harsher sentence than the individual would otherwise receive had he not been wrongfully sent to prison. Since the Act imposes such punishment on innocent conduct, it is void for being overbroad. As indicated previously, this argument may not have been advanced in

Grant, supra, nor previously advanced in this court. It was, however, made in this cause, and Petitioner urges this court to accept jurisdiction to review the decision of the district court to reject the argument.

E. The Vagueness Issue

A vague statute is one that fails to give adequate notice of what conduct is prohibited, and which. because of its imprecision, may also invite discriminatory enforcement. Southeastern Fisheries Association v. D.N.R., 453 So. 2nd 1351 (Fla. 1984).

Sec. 775.082(8)(d)1 Fla, Stat. (1997) provides that a prison releasee reoffender must be sentenced under the terms of the Act unless one of four exceptions are found to be present, The Act fails to define tha terms "sufficient evidence". "material witness". "extenuating circumstances". or "just prosecution" used in those exceptions, The district court's opinion in Grant rejected the argument that the legislative failure to define these terms rendered the act unconstitutionally vague.

Another argument rejected by the district court in this cause, but probably not made previously to this court, or in Grant, supra. is that ths punishment schema established by the Act is also vague. The act requires a "reoffender" to be sentenced as follows:

a. For a felony punishable by life. by a term of imprisonment for life;

b. For a felony of the first degree. by a term of imprisonment of 30 years., .

This language ignores the fact that some offenses are first degree felonies and are punishable by life imprisonment. The Act is vague as to whether an individual charged with such an offense would receive a 30 year sentence, or life imprisonment. Since it is vague, it is void, Petitioner urges this court to accept jurisdiction to review this issue as well.

F. T h e

Substantive due process is a restriction upon the manner in which a penal code may be enforced, Rochin v. California, 342 U.S. 165, 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 allows victims, in some circumstances, to determine the punishment, without providing an objective standard to follow. 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; as well as defendants who commit offenses within a three year time period following release, and those who wait three years and one day. The act arbitrarily and capriciously fails to draw any distinction between people who were in prison previously for relatively minor offenses, or who were wrongfully sent to prison, and those who were previously incarcerated for severe or violent offenses. This last failure is made even more apparent by the stated purpose of the Act, which was to redress recent court decisions that have mandated the early release of *violent* felony offenders1 and to ensure that the public is protected from violent felony offenders who have previously sentenced to prison and who continue to prey on society by reoffending, Ch. 97-239 Laws of Florida. Clearly. a person who had been wrongfully convicted previously is not a violent offender whb continues to prey upon society, and is thus not in the group ostensibly targeted by the legislation, yet he is subject to the plain language of the Act, The same logic applies to a person imprisoned for non-violent crime. Despite the stated legislative goal of enhanced punishment for violent felony reoffenders, the actual operation of the statute is to impose extremely harsh penalties on a defendant who has served time in a Florida prison (and only a Florida prison), far any offense, or for no offense at all, within three years of committing an enumerated offense. 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.

G. 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 classify defendants who were wrongfully sentenced to prisan in Florida, or those who were sentenced for relatively minor offenses, with those who were previously convicted of violent offenses. It is not rational to make a distinction based on where a particular defendant has previously served a prison sentence. The three year time period does not appear to relate to any objective standard. Since the classifications are not rational, they are void. This cause should be reviewed on that basis.

F. The Separation of Powers Issue

Petitioner is aware that in this court is reviewing the decision of State v. Cotton, 728 So. 2nd 252 (Fla. 2nd DCA 1998) in which the district court ruled that the sentencing court, not the prosecuting attorney, determines whether the exceptions listed in Sec. 775.082(8)(d)1 are applicable to a particular case. However, in the event that determination

is ever reversed or receded from. Petitioner would then state that the Act is violative of the principle separation of powers by removing any and all discretion from the judiciary in determining an appropriate sentence, London v. State. 623 So, 2nd 527 (Fla. 1st DCA 1993).

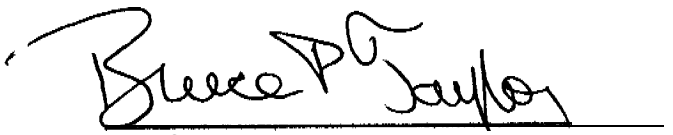
G. The Application Issue

Petitioner was sentenced before the district court's opinion in Cotton, supra. It is clear from the record that the trial court believed it was incumbent to impose a mandatory life sentence. In tha event Cotton, supra. is upheld, Petitioner would submit that the situation is analogous to a defendant who has been sentenced according to an incorrect guideline scoresheet. Such a defendant is entitled to be resentenced. even if the sentence he actually received was within the permitted range of the correctly calculated scoresheet, Carter v. State, 705 So. 2nd 582 (Fla. 2nd DCA 1997). There is nothing in the record to show that the trial court would have otherwise imposed a life sentence. Petitioner's guideline range was less than a life sentence. If the Act is found to be constitutional, Petitioner should be resentenced for a determination on whether any of the four exceptions are applicable.

CONCLUSION

Petitioner requests that this Honorable Court accept jurisdiction of this matter, and declare Ch. 97-239 Laws of Florida to be unconstitutionally void.

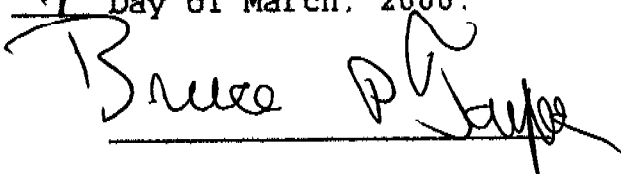
Respectfully Submitted:



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 7 Day of March, 2000.



BRUCE P. TAYLOR
Assistant Public Defenaer
Pla. Bar No. 224936

Public Defender's Office
Polk County Courthouse

P.O. Box 9000-- Drawer PD
Bartow, Fl. 33831
(863) 534-4200

APPENDIX

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 3380210327

January 28, 2000

CASE NO.: 2D98-4429
L.T. No. : CF98-00084A-XX

Phillip Grimes, v. State Of Florida,

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Bruce P. Taylor, A.P.D. Helene S. Parnes, A.A.G. Richard M. Weiss, Clerk

bl

James Birkhold
Clerk

Received By
JAN 31 2000
Appellate Division
Public Defenders Office

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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

PHILLIP GRIMES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 9844429

Opinion filed December 22, 1999.

Appeal from the Circuit Court for Polk County; Robert E. Pyle, Judge.

James Marion Moorman, Public Defender, and Bruce P. Taylor, Assistant Public Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Helene S. Panes and John M. Klawikofsky, Assistants Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed. See Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999).

PARKER, A.C.J., GREEN, and NORTHCUTT, JJ., Concur.

POLK COUNTY
POLK COUNTV COURTHOUSE
255 N. BROADWAY . 3RD FLOOR
POST OFFICE BOX 9000-PD
BARTOW, FLORIDA 33831
PHONE: 863/534-4200

HARDEE COUNTY
202 SOUTH 9TH AVENUE
SUITE B
WAUCHULA, FLORIDA 33673
PHONE: 863/773-6758

HIGHLANDS COUNTY
510 FERNLEAF AVENUE
POST OFFICE BOX 3741
SEBRING, FLORIDA 33671
PHONE: 863/386-6724

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

HOLLY M. STUTZ
EXECUTIVE DIRECTOR

PLEASE REPLY TO

P.O. Box 9000-PD
Bartow, FL 33831

March 7, 2000

Honorable Debbie Causseaux, Acting Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1927

FILED
DEBBIE CAUSSEAUX
MAR 10 2000
CLERK, SUPREME COURT
BY

RE: Phillip Grimes vs. State of Florida
Case No. scoo-350

Dear Ms. Causseux:

Enclosed are the original and five copies of the Second Amended Jurisdictional Brief with Appendix and disk for filing in the above styled cause.

Sincerely,

Debbie Curl
Secretary, Appellate Division

Enclosures: as stated

xc: Helen S. Parnes, Assistant Attorney General