

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

FILED
DEBBIE CAUSSEAU

MAR 06 2000

CLERK, SUPREME COURT

BY DJ

THOMAS KIRKENDALL,

Petitioner,

v.

Case No. scoo-351

STATE OF FLORIDA,

Respondent.

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

JURISDICTIONAL BRIEF OF RESPONDENT

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROBERT J. KRAUSS
Senior Assistant Attorney General
Chief of Criminal Law, Tampa
Florida Bar No. 238538

RONALD NAPOLITANO
Assistant Attorney General
Florida Bar No. 175130
2002 North Lois Avenue, Suite 700
Tampa, Florida 33607-2366
(813) 873-4739

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
WHETHER THE OPINION OF THE SECOND DISTRICT COURT OF APPEALS IN THE INSTANT CASE EXPRESSLY DECLARES THE PRISON RELEASEE REOFFENDER ACT TO BE VALID GIVING THE FLORIDA SUPREME THE DISCRETIONARY JURISDICTION TO REVIEW THE CASE PURSUANT TO FLA. R. APP. PRO. 3.030 (Z)(A)(I) (1999)	3
CONCLUSION	4
CERTIFICATE OF SERVICE	4

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.

TABLE OF CITATIONS

PAGE NO.

Cotton v. State,
728 So. 2d 251 (Fla. 2d DCA 1998) 3

McKnight v. State,
727 So. 2d 314 (Fla. 3d DCA 1999) 3

OTHER AUTHORITIES

Fla. R. App. Pro 9.030(a)(2)(A)(I) (1999) , 2,3

s. 775.082(8) Fla. Stat. (1977) 3

STATEMENT OF THE CASE AND FACTS

Respondent accepts the statement of the case and facts as set forth by the petitioner.

S ———RY OF THE ARGUMENT

Respondent acknowledges that this Court has discretionary jurisdiction to review the decision of the Second District Court of Appeal in the instant case pursuant to Fla. R. App. Pro 9.030(a)(2)(A)(I) (1999) because the decision construes the constitutional validity of the Prison Releasee Reoffender Statute.

ARGUMENT

WHETHER THE OPINION OF THE SECOND DISTRICT COURT OF APPEALS IN THE INSTANT CASE EXPRESSLY DECLARES THE PRISON RELEASEE REOFFENDER ACT TO BE VALID GIVING THE FLORIDA SUPREME THE DISCRETIONARY JURISDICTION TO REVIEW THE CASE PURSUANT TO FLA. R. APP. PRO. 3.030 (2) (A)(I) (1999) .

Respondent acknowledges that the Second District Court of Appeals expressly declared the prison releasee reoffender statute (s. 775.082(8), Fla. Stat. (1997)) to be valid. This Court, therefore, has discretionary jurisdiction pursuant to Fla. R. App. Pro 3.030(a) (2) (A) (I) (1999).


Numerous cases are presently pending before this Court regarding the validity of this statute based upon the constitutional grounds raised by the petitioner. This Court has already heard oral arguments regarding the constitutionality of the prison release reoffender statute on November 3, 1999, in the cases of McKnight v. State, 727 So.2d 314 (Fla. 3d DCA 1999), *rev. granted* 740 So.2d 528, and Cotton v. State, 728 So.2d 251 (Fla. 2d DCA 1998), *rev. granted* 737 So.2d 551 (Fla. 1999).


CONCLUSION

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

Respectfully submitted,

**ROBERT A. BUTTERWORTH
ATTORNEY GENERAL**


ROBERT J. KRAUSS
Senior Assistant Attorney General
Chief of Criminal Law, Tampa
Florida Bar No. 238538


RONALD NAPOLITANO
Assistant Attorney General
Florida Bar No. 175130
2002 N. Lois Ave. Suite 700
Tampa, Florida 33607-2366
(813) 873-4739

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Megan Olson, Assistant Public Defender, P.O. Box 9000 - Dsrawer PD, Bartow, Florida 33831, on the 2nd day of March, 2000.


COUNSEL FOR RESPONDENT