

IN THE SUPREME COURT OF FLORIDA

DONALD HUNTER, :
 :
 Petitioner, :
 :
 vs. : Case No. D99-2045
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

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

INITIAL BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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STATEMENT OF TYPE USED

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

STATEMENT OF THE CASE AND FACTS

Petitioner, DONALD HUNTER, was charged with: burglary; petit theft, five counts of forgery; five counts of uttering a forged instrument; five counts of grand theft; and one count of cocaine possession, by a charging document filed in Highlands County on June 12, 1998 (R1). A notice of qualification as a Prison Releasee Reoffender was filed against Petitioner on June 16, 1998 (R37). The Petitioner entered a negotiated plea to charges of burglary, and it was noted that the other pending criminal charges would be nolle prossed.

A fifteen-year prison sentence, pursuant to the Prison Releasee Reoffender Act was imposed (TR10). An appeal was taken to the Florida Second District Court of Appeal. An opinion was issued on February 11, 2000. That opinion noted a conflict with a decision of the Fourth District Court of Appeal. Review in this Court was thereafter sought.

SUMMARY OF THE ARGUMENT

This case involves a question of the Prison Releasee Reoffender Act. If the Act is constitutional, Petitioner would take the stance that the Act is inapplicable to him.

ARGUMENT

ISSUE I

WHETHER OR NOT THE IMPOSED SENTENCE
IS CORRECT.

The instant case involves a question regarding the correctness of Petitioner's sentence. Initially, several various criminal charges were filed against the Petitioner. A negotiated plea to charges of burglary was entered (R43). The sentence which was imposed was pursuant to the Prison Release Reoffender Act (TR10). An appeal was taken, and the lower appellate court ruled that the subject sentence was to be upheld and also ruled that Petitioner's offense involved burglary of an unoccupied dwelling. While the record is unclear as to this point, if the Act is constitutional, Petitioner would take the position that the Act does not apply to him.

Petitioner would argue that the PRR Act itself might violate prohibitions against double jeopardy and cruel and unusual punishment. Both the U.S. and Florida Constitution have provisions prohibiting such punishment. A proportionality question is relevant in this regard. Such a theory means that the sentence should be proportionate to the offense. The PRR Act would appear to violate proportionality concepts by the way in which reoffenders are punished. It is argued that the PRR Act imposes disproportionate punishment, without regard to the nature of prior offenses. The time limit based upon time length from prison release and new offense is arbitrary.

Double jeopardy clause protects multiple punishment for the same offense, N. C. v. Pearce, 395 U.S. 711 (1969). If a defendant is punished as an habitual offender and a PRR Act violator, he could, in effect receive double punishment.

Should the subject statutory provision be upheld as constitutional, the Petitioner would question its applicability to him. In regard to the PRR Act, assuming the Petitioner went to a building that was unoccupied, does the Act apply?

The statutory provision lists burglary of an occupied structure or dwelling, as qualifying for the increased punishment. § 775.082(8), Fla. Stat. (1998 Supp.). The case of Robinson v. State, 25 Fla. Law Weekly D418 (Fla. 4th DCA Feb. 16, 2000), ruled that the structure need be occupied in order for the Prison Releasee Reoffender Act to apply, noting:

In other words...the PRR statute...limits...sentencing as a PRR to those burglaries that involve a structure occupied by people.

Id. McDaniel v. State, 25 Fla. Law Weekly D384 (Fla. 2d DCA Feb. 11, 2000), ruled that an unoccupied structure did not qualify for the PRR Act.

Due to the factual ruling that the Petitioner did not enter an occupied facility, it is an inexcusable course of action to allow him to have a PRR sentence. In Petitioner's view, the sentence should not have been imposed and that situation should be rectified by a reversal of his sentence.

CONCLUSION

Based upon the arguments made, Petitioner prays that this case be reversed for appropriate relief.

APPENDIX

PAGE NO.

1. Second District Court of Appeal filed on
February 11, 2000.

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CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Ronald Napolitano, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this _____ day of April, 2002.

Respectfully submitted,

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