IN THE SUPREME COURT OF FLORIDA

VERRO CHAMBERS,	)	
Petitioner,	)	
v.	)	CASE NO. SC00-416
STATE OF FLORIDA,	)	
Respondent.	)	

PETITIONER'S REPLY BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner files this reply to the Brief of Respondent, which will be referred to as "RB." Petitioner will rely on his Initial Brief regarding the constitutionality of §775.082(8), Fla. Stat. (1997), the Prison Releasee Reoffender [PRR] Act. Petitioner will reply to Issue II (whether the trial court possessed sentencing discretion and properly exercised it).

This brief is printed in 12 point Courier New Font and submitted on a disk.

ARGUMENT

II. IF SENTENCING UNDER THE PRR ACT IS WITHIN THE TRIAL COURT'S DISCRETION, THE CASE MUST BE REMANDED FOR THE TRIAL COURT TO EXERCISE THAT SENTENCING DISCRETION.

Petitioner's view is that a fair reading of the record reveals that all parties believed the judge had no discretion not to sentence petitioner as a PRR.

Respondent totally fails to address this argument in its brief. Respondent believes State v. Cotton, 728 So. 2d 251 (Fla. 2nd DCA 1998), *rev. granted* 737 So. 2d 551 (Fla. 1999), is no longer good law because the statutory exceptions to the original PRR Act were removed by the legislature in ch. 99-188, Laws of Fla., effective on July 1, 1999, which was long after petitioner's July 26, 1998, crime, and also after his sentencing date of May 21, 1999 (RB at 34).[1]

This Court has held that legislative enactments which occurred subsequent to a defendant's sentencing date cannot be used to bar the defendant's claims. State v. Trowell, 739 So. 2d 77, 78, note 1 (Fla. 1999).

Likewise, in State v. Wise, 744 So. 2d 1035 (Fla. 4th DCA), *rev. granted* 741 So. 2d 1137 (Fla. 1999), the Fourth District

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[1]Respondent fails to acknowledge that the original PRR Act was renumbered in ch. 98-204, Laws of Fla., effective October 1, 1998, so at least as of that date, the legislature had not yet decided to abandon the mitigating circumstances contained in the original Act.

held that even for those shown by the prosecutor to qualify under the Act, the trial court could decide whether to impose a PRR sentence. True to form, respondent has totally failed to address the State v. Cotton and State v. Wise positions in its brief.

If this Court finds that the trial court retains the power to impose or decline to impose a PRR sentence on a qualifying offender, petitioner's sentence must be vacated and the case remanded for the trial court to exercise that discretion. *Cf.* Crumitie v. State, 605 So. 2d 543 (Fla. 1st DCA 1992) (remand proper remedy where the judge thought a life sentence was mandatory for an habitual violent offender). Moreover, any doubt as to whether the trial court knew it could exercise discretion must be resolved in favor of resentencing. *Cf.* White v. State, 618 So. 2d 354, 355 (Fla. 1st DCA 1993) (where trial court might have misapprehended scope of its discretionary sentencing authority, sentences and case remanded for trial court to reconsider sentencing options).

CONCLUSION

Based on the arguments contained herein and the authorities cited in the Initial Brief, petitioner requests that this Court quash the decision of the district court, declare the PRR Act unconstitutional, and remand with directions to resentence petitioner in accord with its disposition of the issues.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to James W. Rogers and Charmaine M. Millsaps, Assistant Attorneys General, by delivery to The Capitol, Plaza Level, Tallahassee, FL., and by U.S. Mail to Petitioner, this ___ day of May, 2000.

_____
P. DOUGLAS BRINKMEYER #197890
ASSISTANT PUBLIC DEFENDER

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VERRO CHAMBERS, :

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Respondent. :

_____/

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF ON THE MERITS

NANCY A. DANIELS
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