

# Supreme Court of Florida

---

No. SC00-428

---

**ENNIO FORESTA,**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

[March 14, 2002]

QUINCE, J.

We have for review a decision on the following question certified by the First District Court of Appeal to be of great public importance:

DOES THE PRISON RELEASEE REOFFENDER PUNISHMENT ACT, CODIFIED AS SECTION 775.082(8), FLORIDA STATUTES (1997), VIOLATE THE SEPARATION OF POWERS CLAUSE OF THE FLORIDA CONSTITUTION?

Foresta v. State, 751 So. 2d 758 (Fla. 1st DCA 2000). We have jurisdiction. See

art. V, § 3(b)(4), Fla. Const. For the reasons set forth in Grant v. State, 770 So.

2d 655 (Fla. 2000), and State v. Cotton, 769 So. 2d 345 (Fla. 2000), we answer the

certified question in the negative.

The First District also certified conflict with the Fourth District Court of Appeal's decision in State v. Huggins, 744 So. 2d 1215 (Fla. 4th DCA 1999), approved, 802 So. 2d 276 (Fla. 2001), on the issue of whether the Prison Releasee Reoffender Punishment Act is applicable to a conviction for burglary of an unoccupied dwelling. We have jurisdiction to review this issue as well. See art. V, § 3(b)(4), Fla. Const. On this issue, we quash the decision of the First District and remand for reconsideration upon application of our decision in State v. Huggins, 802 So. 2d 276 (Fla. 2001).

It is so ordered.

SHAW, HARDING, ANSTEAD, and PARIENTE, JJ., concur.  
LEWIS, J., concurs in part and dissents in part with an opinion, in which WELLS, C.J., concurs.

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

LEWIS, J., concurring in part and dissenting in part.

I agree with the majority that the PRRP is constitutional. However, with respect to the question of whether burglary of a dwelling, whether occupied or not, qualifies the defendant for prison releasee reoffender sentencing, I respectfully dissent for the reasons stated in my dissenting opinion, and for the reasons set

forth in the dissenting opinion of Chief Justice Wells, in State v. Huggins, 802 So.  
2d 276 (Fla. 2001).

WELLS, C.J., concurs.

Application for Review of the Decision of the District Court of Appeal - Certified  
Great Public Importance

First District - Case No. 1D98-3206

(Duval County)

Nancy A. Daniels, Public Defender, and P. Douglas Brinkmeyer, Assistant Public  
Defender, Second Judicial Circuit, Tallahassee, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, James W. Rogers, Tallahassee Bureau  
Chief, Criminal Appeals, and Trisha E. Meggs, Assistant Attorney General,  
Tallahassee, Florida,

for Respondent