

SC00-511

ORIGINAL.

IN THE SUPREME COURT OF FLORIDA

FILED
DEBBIE CAUSSEAU
FEB 29 2000
CLERK, SUPREME COURT
BY DJ

CHRISTOPHER L. LIPPETTE, :
 :
Petitioner, :
 :
vs. :
 :
STATE OF FLORIDA, :
 :
Respondent. :
 :
_____ :

Case No. 99-0192

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

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
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.

PRELIMINARY STATEMENT

References to the opinion of the Second District Court of Appeal (which is reproduced in the Appendix of this brief) will be designated "A", followed by the appropriate page number. References to the record before the Second District will be designated by the volume "v" or the supplement "supp" followed by the appropriate record page number "R" or transcript page number "T".

STATEMENT OF THE CASE AND FACTS

On February 5, 1998, the State Attorney in Polk County filed an information charging the Appellant, Christopher L. Lippett, with: armed burglary of a store in violation of section 810.02(2)-(b), Florida Statutes (1997); armed robbery of Dianna Mannis in violation of section 812.13(2)(a), Florida Statutes (1997); armed burglary of a store in violation of section 810.13(2)(b), Florida Statutes (1997); armed robbery of Alice Haggard in violation of section 812.13(2)(a), Florida Statutes (1997); and possession of a firearm by a convicted felon in violation of section 790.23, Florida Statutes (1997) (v1:R3-7). The offenses allegedly occurred on January 6, 1998 (v1:R3-6).

A jury trial was hearing was held on October 12, 1998, before Judge Young (v1:T1-123; v2:T124-165; Supp:R73-145), solely on one of the robbery charges and one of the burglary charges (v2:T160-162). At the close of the State's case, the defense moved for judgment of acquittal (v1:T102-103). The motion was denied as to the robbery charge, but the trial court was concerned about the store being open and granted the motion as to the burglary charge (v1:R16; T103-104). The jury found Mr. Lippett guilty as charged of robbery and found he did carry or use a firearm (v1:R15; v2:T158-159).

A sentencing proceeding was held on November 24, 1998 (v1:R17-27). The State asserted that the PSI indicated Mr. Lippett had been released from prison less than three years before the instant offense which qualified him for sentencing as a prison release

reoffender (v1:R19-20). Defense counsel also stated that it appeared Mr. Lippett was released from prison within three years of the instant offense (v1:R20). The trial court found Mr. Lippett qualified for prison releasee reoffender sentencing based on his prior prison release date and the commission of the instant qualifying offense (v1:R21). The trial court stated that finding he qualified as a prison releasee reoffender made such sentencing mandatory (v1:R5). The State noted that other offenses had been severed and the instant conviction was only for count four, robbery with a firearm (v1:R21-22).

Mr. Lippett was adjudicated guilty of the armed robbery charged in count four (v1:R22, 28, 37). He was sentenced to life in prison as a prison releasee reoffender with a three year minimum mandatory term (v1:R22, 25-26, 30-33, 35, 37). The State later filed a notice of nolle prosequi as to counts three and five (addition:R70).

A timely notice of appeal **was** filed on December 23, 1998 (v1:R38). On appeal, the Appellant argued the Prison Releasee Reoffender Act was unconstitutional and sentencing under the Act was improper where the trial judge indicated he had no discretion in imposing the sentence.

On February 11, 1999, the Second District Court filed a per curiam affirmance with a citation to Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999). Lippett v. State, Case No. 99-0192 (Fla. 2d DCA Feb. 11, 1999).

SUMMARY OF THE ARGUMENT

This Court has jurisdiction to review Mr. Lippett's case. In citing to Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999), the Second District Court of Appeal expressly construed the constitutionality of a statute and declared it valid. This Court has already accepted review of other decisions holding section 775.082(8), Florida Statutes (1997) constitutional and valid. This Court should exercise its discretion to review Mr. Lippett's case as it has in other cases relating to the validity and constitutionality of the Prison Releasee Reoffender Act.

ARGUMENT

ISSUE I

THE DISTRICT COURT'S DECISION EXPRESSLY DECLARES A STATE STATUTE VALID, GIVING THIS COURT JURISDICTION PURSUANT TO FLA. R. APP. P. 9.030(a)(2)(A)(i).

In Jollie v. State, 405 So. 2d 418 (Fla. 1981), the Florida Supreme Court held that a District Court of Appeal per curiam opinion which cites as controlling authority a decision that is pending review in the Florida Supreme Court continues to constitute prima facie express conflict and allows Supreme Court to exercise its jurisdiction. In Lippett v. State, Case No. 99-0192 (Fla. 2d DCA Feb. 11, 1999), the Second District Court of Appeal affirmed the lower court without opinion and cited to Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999), a case currently pending review in the Florida Supreme Court (Appendix:A1). Since the opinion issued by the Second District in Grant expressly declares section 775.082(8), Florida Statutes (1997) (the Prison Releasee Reoffender Act) to be valid, this Court can exercise its discretion to review the instant **case**.

The Grant opinion discusses constitutional challenges grounded upon the single subject requirement, separation of powers, cruel and unusual punishment, vagueness, due process, equal protection, and ex post facto. The opinion also notes that this Court has granted review on cases from other district courts of appeal which have upheld the statute against attacks on its constitutionality,

APPENDIX

PAGE NO.

1. Second District Court of Appeal Opinion filed
February 11, 1999.

A1

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

CHRISTOPHER L. LIPPETT,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)

Case No, 2D99-192

Opinion filed February 11, 2000.

Appeal from the Circuit Court for Polk
County; Robert A. Young, Judge.

James Marion **Moorman**, Public Defender,
and John C. Fisher, Assistant Public
Defender, **Bartow**, for Appellant.

Robert A. **Butterworth**, Attorney General,
Tallahassee, and Ronald Napolitano,
Assistant Attorney General, Tampa, for
Appellee.

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Appellate Division
Public Defenders Office

PER CURIAM.

Affirmed. See Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999).

PATTERSON, C.J., and BLUE and SALCINES, JJ., Concur.

AI

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 25th day of February, 2000.

Respectfully submitted,



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