

SC00-512

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CLERK, SUPREME COURT

BY DJ

IN THE SUPREME COURT OF FLORIDA

CHRISTOPHER L. LIPPETTE,

Petitioner,

vs.

:

Case No. 99-1561

STATE OF FLORIDA,

:

Respondent.

:

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 in case no. CF98-0092, 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:R2-6). The offenses allegedly occurred on- January 6, 1998 (v1:R2-5).

At a trial held on counts three and four, a directed judgment of acquittal was granted as to count three, and Mr. Lippett was adjudicated not guilty on that count (v1:R10) . The jury found Mr. Lippett guilty as charged of robbery and found he did carry or use a firearm (v1:R9). On November 24, 1998, Mr. Lippett was adjudicated guilty of the armed robbery charged in count four (v1:R11). He was sentenced to life in prison as a prison releasee reoffender with a three year minimum mandatory term (v1:R13-16, 18, 20). A timely notice of appeal was filed on December 23, 1998 (v1:R21-22).

A trial on count two was held before Judge Young on March 15-16, 1999¹ (v1:R1-T1-108; v2:T109-249). The defense motions for judgment of acquittal were denied (v2:T186-187). The jury found

¹ The State nol prossed counts one and five (v1:R45, 52; v1:T97; v2:T241-242).

Mr. Lippett guilty as charged of robbery and found he did carry or use a firearm (v2:T238-240).

On March 19, 1999, a sentencing proceeding was held before Judge Young (v1:R24-36). Mr. Lippett entered a plea in his two remaining cases, CF97-6225 and CF98-0325, to sentences to run concurrent with sentences already received and the sentence about to be imposed in this case (v1:R25-30).

The State sought sentencing as a prison release reoffender, and submitted documents from a prior conviction of Mr. Lippett to support that request (v1:R31, 46-51). Defense counsel objected to the application of the prison release reoffender statute because the prior offense occurred in 1991 (v1:R31-32). The trial court found Mr. Lippett to be a prison releasee reoffender (v1:R32). He was adjudicated guilty of the armed robbery charged in count two (v1:R32, 37). He was sentenced to life in prison as a prison releasee reoffender with a three year minimum mandatory term to run concurrent with his other sentences (v1:R32-33, 39-42, 44-45).

A timely notice of appeal was filed on December 23, 1998 (v1:R53-54).

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. 99-1561 (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. 99-1561 (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,

e.g., Speed v. State, 732 So. 2d 17 (Fla. 5th DCA), rev. granted, 732 So. 2d 17 (Fla. 1999); Woods v. State, 740 So. 2d 20 (Fla. 1st DCA), rev. granted, 740 So. 2d 529 (Fla. 1999); McKnight v. State, 727 So. 2d 314 (Fla. 3d DCA), rev. granted, 740 So. 2d 528 (Fla. 1999). An attorney from undersigned counsel's office filed a jurisdictional brief in Grant on December 30, 1999. The State filed a jurisdictional brief in late January.

This Court has granted review in other cases which found the Prison Releasee Reoffender Act to be constitutional, certified a question concerning the constitutionality of the Act, or affirmed with a citation to a case which found the Act constitutional. See Gray v. State, 742 So. 2d 805 (Fla. 5th DCA 1999), rev. granted, Case No. 96,765 (Fla. Jan. 18, 2000); Ellis v. State, 740 So. 2d 1215 (Fla. 2d DCA 1999), rev. granted, Case No. 96,551 (Fla. Jan. 6, 2000); Simmons v. State, 24 Fla. L. Weekly D1830 (Fla. 4th DCA Aug. 4 1999), rev. granted, Case No. 96,465 (Fla. Jan. 18, 2000); Richardson v. State, 24 Fla. L. Weekly D1896 (Fla. 5th DCA 1999), rev. granted, Case No. 96,764 (Fla. Jan. 6, 2000); Moon v. State, 737 So. 2d 655 (Fla. 5th DCA 1999), rev. granted, Case No. 96,459 (Fla. Jan. 6, 2000); Durden v. State, 743 So. 2d 77 (Fla. 1st DCA 1999), rev. granted, Case No. 96,479 (Fla. Jan. 6, 2000); Reyes v. State, 742 So. 2d 825 (Fla. 1st DCA 1999), rev. granted, Case No. 96,487 (Fla. Jan. 6, 2000); Williams v. State, 738 So. 2d 1032 (Fla. 5th DCA 1999), rev. granted, Case No. 96,672 (Fla. Jan. 3, 2000); Jackson v. State, 744 So. 2d 466 (Fla. 1st DCA 1999), rev. granted, Case No. 96,308 (Fla. Dec. 15, 1999); Alexander v. State,

739 So. 2d 667 (Fla. 5th DCA 1999), rev. granted, Case No. 96,397 (Fla. Dec. 9, 1999); Stursis v. State, 733 So. 2d 1157 (Fla. 5th DCA 1999), rev. granted, Case No. 96,210 (Fla. Dec. 3, 1999); King v. State, 729 so. 2d 542 (Fla. 1st DCA 1999), rev. granted, Case No. 95,669 (Fla. Nov. 15, 1999); Sanders v. State, 737 So. 2d 589 (Fla. 5th DCA 1999), rev. sranted, 744 so. 2d 456 (Fla. 1999); Patten v. State, 733 So. 2d 1159 (Fla. 5th DCA 1999), rev. sranted, 743 So. 2d 509 (Fla. 1999); Lookadoo v. State, 737 So. 2d 637 (Fla. 5th DCA 1999), rev. granted, 744 So. 2d 455 (Fla. 1999); Green v. State, 733 so. 2d 1159 (Fla. 5th DCA 1999), rev. granted, 743 So. 2d 509 (Fla. 1999); Hack v. State, 733 So. 2d 598 (Fla. 5th DCA 1999), rev. granted, 744 So. 2d 454 (Fla. 1999); Maxwell v. State, 732 So. 2d 1209 (Fla. 5th DCA 1999), rev. granted, 743 So. 2d 509 (Fla. 1999); Clark v. State, 732 So. 2d 501 (Fla. 5th DCA 1999), rev. granted, 741 So. 2d 1134 (Fla. 1999); Carter v. State, 730 So. 2d 1292 (Fla. 5th DCA), rev. granted, 744 So. 2d 452 (Fla. 1999); State v. Murrav, 732 So. 2d 500 (Fla. 5th DCA 1999), rev. granted, Murrav v. State, 744 So. 2d 455 (Fla. 1999); Moore v. State, 729 So. 2d 541 (Fla. 1st DCA 1999), rev. denied, 741 So. 2d 1136 (Fla. 1999); Bland v. State, 729 So. 2d 539 (Fla. 1st DCA), rev. denied, 744 so. 2d 452 (Fla. 1999).

This Court has granted review in other cases which dealt with whether a trial judge has discretion under the Prison Releasee Reoffender Act, an issue which relates to whether the Prison Releasee Reoffender Act unconstitutionally violates the separation of powers. See State v. Damico, 742 so. 2d 349 (Fla. 2d DCA 1999),

rev. granted, Case No. 96,392 (Fla. Jan. 6, 2000); State v. Johnson, 743 So. 2d 45 (Fla. 2d DCA 1999), rev. granted, Case No. 96,392 (Fla. Jan. 6, 2000); State v. Forde, 742 So. 2d 349 (Fla. 2d DCA 1999), rev. granted, Case No. 96,392 (Fla. Dec. 3, 1999); State v. Betts, 743 so, 2d 554 (Fla. 2d DCA 1999), rev. granted, Case No. 96,392 (Fla. Nov. 15, 1999); State v. Wise, 744 So. 2d 1035 (Fla. 4th DCA 1999) rev. denied, 741 So. 2d 1137 (1999); Coleman v. State, 739 so. 2d 626 (Fla. 2d DCA 1999), rev. granted, State v. Coleman, 743 So. 2d 15 (Fla. 1999); State v. Cowart, 24 Fla. L. Weekly D1085 (Fla. 2d DCA Apr. 28, 1999), rev. denied, 741 So. 2d 1137 (1999); State v. Cotton, 728 So. 2d 251 (Fla. 2d DCA 1999), rev. granted, 737 So. 2d 551 (Fla. 1999).

This Court should exercise its discretion to review Mr. Lippett's case for the same reasons that it granted review in other cases relating to the validity and constitutionality of the Prison Releasee Reoffender Act.

CONCLUSION

Based upon the foregoing argument, reasoning and authorities, Mr. Lippett petitions this Court to grant review of the Second District's decision in Lippett v. State, Case No. 99-1561 (Fla. 2d DCA Feb. 11, 2000).

APPENDIX

PAGE NO.

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

A1

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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. 2D99-1561

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 Dale **E.** Tarpley, Assistant
Attorney General, Tampa, for Appellee.

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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 Dale E. Tarpley, 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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