ORIGINAL

IN THE SUPREME COURT OF FLORIDA

ANTHONY CLARK,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SCOO-515

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT REGARDING TYPE

The size and style of type used in this brief is 12-point Courier New, a font that is not proportionately spaced.

TABLE OF CITATIONS

OTHER AUTHORITIES:

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case with the following additions and corrections:

Petitioner was charged by second amended information with the offense of resisting, obstructing or opposing a correctional officer (at the Hardee County Jail), in the lawful execution of his duty, by kicking and struggling; the offense occurred on January 10, 1998 (R 164). A jury returned a verdict of guilty as charged on July 15, 1998 (R 160, 206). The State subsequently filed a notice of intent to seek sentencing as a prison releasee reoffender on August 25, 1998 (R 165). On September 29, 1998, defense counsel filed a motion to declare the prison releasee reoffender statute unconstitutional (R 186-205). On September 21, 1998, a sentencing was held (R 212-227). The trial court denied the motion to hold the statute unconstitutional (R 224). Petitioner was sentenced to five years imprisonment as a prison releasee reoffender (R 183, 244).

On appeal , the Second District Court of Appeals rejected the petitioner's argument that the prison releasee reoffender statute did not apply to him because he was incarcerated in the county jail at the time he committed the offense in question. The appellate court also rejected the petitioner's various constitutional attacks on the prison releasee reoffender act, citing as authority its recent decision in Grant v. State, 745 So.2d 519, review granted. Grant v. State, No. SC99-164 (Fla. April 12, 2000). (Copy of

district court opinion attached as an appendix to this brief.)

a

SUMMARY OF THE ARGUMENT

Respondent acknowledges that this Court has discretionary jurisdiction to review the decision of the Second District Court of Appeal in the instant case pursuant to Fla. R. App. Pro 9.030(a) (2)(A)(I) (1999) because the decision construes the constitutional validity of the Prison Releasee Reoffender Statute and because the case cited as authority has been accepted for review.

ARGUMENT

ISSUE

WHETHER THE OPINION OF THE SECOND DISTRICT COURT OF APPEALS EXPRESSLY DECLARES A STATUTE VALID, GIVING THE FLORIDA SUPREME COURT DISCRETIONARY AUTHORITY TO REVIEW THE CASE PURSUANT TO FLA. R. APP. 3,030 (a) (2)(A) (I) (1999). (RESTATED)

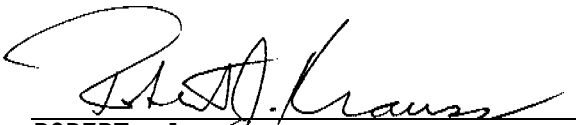
Respondent acknowledges that the decision of the Second District Court of Appeals in the instant case expressly declares the prison releasee reoffender statute, §775.082(8), Fla, Stat. (1997), to be valid (constitutional) and that this court, therefore, has discretionary jurisdiction to review that decision pursuant to Fla. R. App. Pro. 3.030(a)(2)(A)(i) (1999). The decision also cites as authority the decision in Grant v. State, 745 So.2d 519, review granted. Grant v. State, No. SC99-164 (Fla. April 12, 2000). Additionally, since this Court has accepted jurisdiction over the case cited as authority for holding the statute constitutional, this Court has discretionary authority to review the instant case on appeal. See Jollie v. State, 405 So.2d **418** (Fla. 1981) (The Florida Supreme Court may review a citation PCA if the controlling precedent is pending review by the Court); see also Harrison v. Hvster Co., 515 So.2d 1279 (Fla. 1987) (The phase "pending review means that the Court must have accepted the case cited as authority for review.)

CONCLUSION

Respondent respectfully requests that this Honorable Court grant discretionary review in the instant case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Richard T. McKendrick, Esq., 500 South Florida Ave., Suite 600, Lakeland, Florida 33801, this 1st day of May, 2000.

COUNSEL FOR RESPONDENT

AG

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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

ANTHONY CLARK,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 2D98-4287

Opinion filed February 4, 2000.

Appeal from the Circuit Court
for Hardee County;
R. Earl Collins, Judge.

Richard T. McKendrick,
Lakeland, for Appellant.

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

GREEN, Judge.

Anthony Clark timely appeals his sentence as a prison releasee reoffender to five years of imprisonment. We affirm.

While in the Hardee County jail, approximately three months after being released from a Florida state prison, Clark was charged with and found guilty of resisting

an officer with violence. Since resisting an officer with violence is a felony that involves the use or threat of physical force or violence, the offense is a qualifying offense under the prison releasee reoffender statute. See § 775.082(a)1.o., Fla. Stat. (1997).

Clark argues that, because he was incarcerated in county jail at the time the offense occurred, he cannot be considered a releasee. We disagree. There is no restriction in the language of the statute concerning a person's confinement status when a qualifying crime is committed. See § 775.082(8)(a)1, Fla. Stat. (1997). The term releasee only has reference to a defendant's having been "released from a state correctional facility" within the specified period of three years, not whether the defendant is currently incarcerated. § 775.082(8)(a)1., Fla. Stat. (1997). We, therefore, hold that Clark's new offense of resisting an officer with violence, committed while he was incarcerated and within three years of being released from Florida State Prison, is a qualifying offense under the prison releasee reoffender statute.

Next, Clark contends that his sentence imposed pursuant to the prison releasee reoffender statute, section 775.082(8), Florida Statutes (1997), must be reversed because the statute is unconstitutional. Recently, this court addressed all the constitutional challenges which Clark has raised and found the statute constitutional. See Grant v. State, 24 Fla. L. Weekly 02627 (Fla. 2d DCA Nov. 24, 1999).

Affirmed.

CASANUEVA, J., Concurs.
ALTENBERND, A.C.J., Concurs specially.

ALTENBERND, Acting Chief Judge, Concurring.

I concur with considerable reluctance because I doubt that most legislators actually intended the Prison Releasee Reoffender Act to become a substitute for disciplinary procedures within prisons and jails. Although Mr. Clark's conduct may arguably warrant the five-year sentence he received in this case, our interpretation of the Act allows correctional officers to replace traditional methods of prison discipline with long prison sentences. I fear that the Act will be selectively enforced in this context. The taxpayers will pay considerable sums to extend prisoners' sentences due to relatively minor prison disciplinary matters.

Mr. Clark was released from prison in October 1997. For reasons not disclosed in the record, he was an inmate in the Hardee County Jail in January 1998. While Mr. Clark was going to visitation, a guard noticed that he was wearing an earring, which is against jail rules. After Mr. Clark refused the guard's order that he remove the earring, several guards took him to a lock-down cell. A physical altercation occurred inside that cell, apparently during the process of removing the earring. One of the guards hurt his hand on a handcuff chain during this event. For this conduct, Mr. Clark was charged and found guilty of resisting the officers with violence. He received a five-year term of imprisonment under the Prison Releasee Reoffender Act, which is only slightly longer than the sentence he likely would have received under the guidelines.

Section 775.082(9)(a)(1)(o), Florida Statutes (1997), authorizes prison releasee reoffender treatment for any person who commits "any felony that involves the use or threat of use of physical force or violence against an individual," so long as the

person qualifies as a prison releasee.' We already have special penalties for violent crimes against correctional officers. See § 775.0823, Fla. Stat. (1999). A simple battery upon a correctional officer is a felony. See § 784.07(2)(b), Fla. Stat. (1999). Thus, because aggravated assault includes any assault with an intent to commit a felony, see § 784.021, Fla. Stat. (1999), if a prisoner states with sincerity that he is going to kick a guard, he is now subject to an additional mandatory five-year term of imprisonment. I fully agree that correctional officers have a difficult job and need the protection of the law, but this Act is likely to result in more problems than solutions within our prisons and jails.

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[1] Although not applicable at the time of this case, section 775.082(9)(a)(2), Florida Statutes (1999), now designates all state prisoners, whether they ever have been released, as releasee.reoffenders.