

IN THE SUPREME COURT OF FLORIDA

DWIGHT WILLIAMS,

Petitioner,

v.

CASE NO. SC 00-534

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL,
STATE OF FLORIDA

PETITIONER'S REPLY BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

Point One. This court should declare the Prison Releasee Reoffender Act unconstitutional based on the argument and authorities set out in Judge Sharp's well-reasoned dissent in Lookadoo v. State, 737 So. 2d 637 (Fla. 5th DCA 1999).

ARGUMENT

IN REPLY: THE PRISON RELEASEE REOFFENDER ACT VIOLATES THE CONSTITUTIONAL PRINCIPLE OF SEPARATION OF POWERS AND THE RIGHT TO DUE PROCESS OF LAW.

The State's defenses of the Releasee Reoffender Act have a hollow ring. It argues that a factual finding by a non-executive entity is, after all, a necessary predicate to application of the Act because a jury has to find the defendant guilty of whatever current offense he is being sentenced for. This unremarkable fact is no defense to the genuine problem caused by the Reoffender Act's placing with the executive all of the fact-finding powers and duties *that relate to deciding on an appropriate sentence*.

The State also argues that trial judges have plenty of discretion under the Act, since they "still ha[ve] to evaluate whether the State has proven that the defendant qualifies for sentencing under the statute and still ha[ve] to impose the sentence itself." (Answer brief at 5) The judge's "evaluation" consists of asking the defense whether it objects to the State's proffered affidavit from the Department of Corrections stating the defendant's last release date. As noted in the initial brief, "impos[ing] the sentence itself" is nothing but a ceremonial act—a rubber stamp on the executive's choice of sentence.

The Releasee Reoffender Act impermissibly transfers sentencing power to the executive branch, although that power is reserved to the judiciary by Article V, Section 1 of Florida's constitution. As Judge Sharp of the Fifth District Court pointed out in her well-reasoned dissent in Lookadoo v. State, 737 So. 2d 637 (Fla. 5th DCA 1999),

Sentencing is traditionally the function of the judiciary. See Singletary v. Whittaker, ...739 So.2d 1183 (Fla. 5th DCA 1999); State v. Rome, 696 So.2d 976 (La.1997). The statute here completely removes the trial judge from the discretionary sentencing function and places it in the hands of the executive branch--the attorney general--or the victim. This violates the constitutional division between the executive and judicial branches of government. See Chiles v. Children A, B, C, D, E, and F, 589 So.2d 260 (Fla.1991) (statute authorizing executive branch commission to take steps to reduce state agency budgets to prevent deficit violated separation of powers doctrine); Lewis v. Bank of Pasco County, 346 So.2d 53 (Fla.1976) (statute granting comptroller the authority to release to the public otherwise confidential bank or trust company records violated the doctrine of separation of powers as it granted the comptroller the power to say what the law shall be). See also Walker v. Bentley, 678 So.2d 1265 (Fla.1996) (statute providing that indirect criminal contempt may not be used to enforce compliance with injunctions against domestic violence violates constitutional separation of powers); Page v. State, 677 So.2d 55 (Fla. 1st DCA), approved on other grounds, 684 So.2d 817 (Fla.1996) (statute which requires appellate courts to rule on a question of law raised by the state on cross-appeal regardless of the disposition of the defendant's appeal violates separation of powers

doctrine); Ong v. Mike Guido Properties, 668 So.2d 708 (Fla. 5th DCA 1996) (tolling provision of mediation statute is procedural in nature and violates doctrine of separation of powers).

737 So. 2d at 638-39. This court should declare the Reoffender Act unconstitutional and should adopt the foregoing dissent as the opinion of the court.

CONCLUSION

The petitioner requests this court to declare the Prison Releasee Reoffender Act unconstitutional and to remand his case for resentencing pursuant to a valid statute. In the alternative, the petitioner requests this court to hold that the Reoffender Act in fact allows the trial courts to retain discretion, and to remand for resentencing pursuant to a constitutional reading of the Reoffender Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing has been served on Assistant Attorney General Kellie Ann Nielan, of 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, FL 32118, by way of the Attorney General's in-box at the Fifth District Court of Appeal, this 11th day of May, 2000.

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