

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

FILED  
DEBBIE CAUSSEAU

MAR 27 2000

CLERK, SUPREME COURT

BY DJ

TOMMY WILLIAMS, :  
 :  
Petitioner, :  
 :  
vs. :  
 :  
STATE OF FLORIDA, :  
 :  
Respondent. :

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Case No SC00-597

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

BRIEF OF PETITIONER ON JURISDICTION

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TENTH JUDICIAL CIRCUIT

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ATTORNEYS FOR PETITIONER

TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
ISSUE I	
THE DISTRICT COURT'S DECISION EXPRESSLY DECLARES A STATE STATUTE VALID, GIVING THIS COURT JURISDICTION PURSUANT TO <b>FLA.</b> R. APP. P. <b>9.030 (a) (2) (A) (i)</b> .	3
ISSUE II	
THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS FROM OTHERDISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW, GIVING THIS COURT JURISDICTION PURSUANT TO <b>FLA.</b> R. APP. P. <b>9.030 (a) (2) (A) (iv)</b> .	5
CONCLUSION	6
APPENDIX	
CERTIFICATE OF SERVICE	

TABLE OF CITATIONS

CASES

PAGE NO.

<u>Adams v. State</u> 24 Fla. L. Weekly D2394 (Fla. 4th DCA October 20, 1999)	5
<u>Grant v. State,</u> 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999)	1-3, 5
<u>Jollie v. State,</u> 405 So. 2d 418 (Fla. 1981)	3, 5
<u>King v. State,</u> 729 So. 2d 542 (Fla. 1st DCA 1999)	4
<u>Lookadoo v. State,</u> 737 So. 2d 637 (Fla. 5th DCA 1999)	4
<u>McKnight v. State,</u> 727 So. 2d 314 (Fla. 3d DCA 1999)	4
<u>Melton v. State,</u> 24 Fla. L. Weekly D2719 (Fla. 4th DCA December 8, 1999)	5
<u>Speed v. State,</u> 732 So. 2d 17 (Fla. 5th DCA 1999)	3
<u>Thomas v. State,</u> 24 Fla. L. Weekly D2763 (Fla. 5th DCA December 10, 1999)	5
<u>Williams v. State,</u> case no. 99-1984 (Fla. 2d DCA February 18, 2000)	3, 6
<u>Woods v. State,</u> 740 So. 2d 20 (Fla. 1st DCA 1999)	4

OTHER AUTHORITIES

Fla. R. App. P. 9.030(a)(2)(A)(i)	3
Fla. R. App. P. 9.030(a)(2)(A)(iv)	5
§ 775.082(8), Fla. Stat. (1997)	2, 3
§ 784.045, Fla. Stat. (1997)	1
§ 790.23, Fla. Stat. (1997)	1

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.

## STATEMENT OF THE CASE AND FACTS

The state attorney for the Tenth Judicial Circuit in and for Polk County, Florida, filed several informations against the Petitioner, Tommy Williams, charging him with various crimes. On April 19, 1999, Mr. Williams pled no contest to the charges. The court accepted the plea, and sentenced Mr. Williams as a prison releasee reoffender to a terms of 5 years in prison for the main charge. Mr. Williams reserved the right to appeal the trial court's denial of his motion to declare the prison releasee reoffender statute unconstitutional.

Mr. Williams filed a timely notice of appeal on May 13, 1999. On February 18, 2000, the Second District Court of Appeal affirmed the case without opinion, citing to Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999). Mr. Williams filed a Notice of Discretionary Jurisdiction in the Second District Court of Appeal on March 9, 2000.

## SUMMARY OF THE ARGUMENT

This Court has jurisdiction to review Mr. William's case on two grounds. First, in citing to Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999), the Second District expressly construed the constitutionality of a statute and declared it valid. This Court has already accepted review of similar decisions holding §775.082 (8), Fla. Stat. (1997) valid which were issued from other district courts of appeal. Second, the holding that a defendant may be sentenced as both a habitual felony offender and a prison releasee reoffender for a single offense is in conflict with decisions from other district courts of appeal.

## 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 Williams v. State, Case No. 99-1984 (Fla. 2d DCA February 18, 2000), the Second District Court of Appeal affirmed the lower court without opinion and cited to Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999), a case currently pending review in the Florida Supreme Court (Al). Since the opinion issued by the Second District in Grant expressly declares §775.082(8), Fla. Stat. (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., Speedrev. granted 32 So. 2d 17 (Fla. 5th DCA), , Case No. 95,706 (Fla. September 16, 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).

Since then, this Court has also granted review in King v. State, 729 So. 2d 542 (Fla. 1st DCA), Case No. 95,669 (Fla. November 15, 1999) and Lookadoo v. State, 737 So. 2d 637 (Fla. 5th DCA), Case No. 96,460 (Fla. November 15, 1999). Both of these decisions accepted for review also found the Prison Releasee Reoffender Act to be constitutional.

This Court should exercise its discretion to review Mr. Williams' case for the same reasons that it granted review in previous decisions from other district courts of appeal which declared the Prison Releasee Reoffender Act valid.



## ISSUE II

THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS FROM OTHER DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW, GIVING THIS COURT JURISDICTION PURSUANT TO FLA. R. APP. P. 9.030(a)(2)(A)(iv).

The Grant opinion issued by the Second District holds that imposition of a mandatory sentence under the Prison Releasee Reoffender Act which runs concurrently with a habitual felony offender sentence on the same offense does not violate constitutional provisions against double jeopardy. This holding directly conflicts with the Fourth District's decision in Adams v. State, 24 Fla. L. Weekly D2394 (Fla. 4th DCA October 20, 1999). In Adams, the court held that imposition of sentences as both a habitual felony offender and as a prison releasee reoffender for the same offense violated the double jeopardy guarantee against multiple punishments. The Adams court also determined that the Legislature did not intend to authorize "double sentences" when it enacted the Prison Releasee Reoffender Act.

Other decisions in conflict with the opinion at bar are Thomas v. State, 24 Fla. L. Weekly D2763 (Fla. 5th DCA December 10, 1999) and Melton v. State, 24 Fla. L. Weekly D2719 (Fla. 4th DCA December 8, 1999). Both of these decisions cite to Adams and direct the trial court to vacate one of the two sentences. Based on these decisions, and on Jollie, this Court has discretionary jurisdiction over the Petitioner's case. The Petitioner asks this Court to decide the issue in his favor.

## CONCLUSION

Based upon the foregoing argument, reasoning and authorities, Tommy Williams petitions this Court to grant review of the Second District's decision in Williams v. State, Case No. 99-1984 (Fla. 2d DCA February 18, 2000).

APPENDIX

PAGE NO.

1. Second District Court of Appeal Opinion filed  
February 18, 2000.

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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

TOMMY WILLIAMS, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )

Case No. 2D99-1984

Opinion filed February 18, 2000.

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

James Marion **Moorman**, Public  
Defender, and Joan **Fowler**, Assistant  
Public Defender, Bat-tow, for Appellant.

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

Received By  
FEB 13 2000  
Appellate Division  
Public Defenders Office

PER CURIAM.

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

PARKER, A.C.J., and CASANUEVA and STRINGER, JJ., Concur.


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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 ~~21st~~ day of March, 2000.

Respectfully submitted,

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