ORIGINAL

IN THE SUPREME COURT OF FLORIDA

TOMMY WILLIAMS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SCOO-597

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

AMENDED JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

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

On August 12, 1998, petitioner entered a no contest plea and was sentenced to 2 years probation for the offense of burglary of a structure in case 98-02423 (R 16-18). Petitioner was subsequently charged in case 98-07027 with the offenses of attempted robbery (court 1), possession of cocaine (count 2), possession of drug paraphernalia (count 3), and tampering with physical evidence (count 4); the offenses occurring on November 10, 1998 (R 21-24). As a result of these new charges and other technical violations, Petitioner was also charged with violating his probation in the earlier case (98-02423) (R 27).

Petitioner filed a "Motion to Determine Inapplicability of Prison Releasee Reoffender Act, Section 775.082(8), Florida Statutes (1997) or to Declare Such Act Unconstitutional" (R 28-51).

A hearing was held on both cases (new charges and violation of probation) on April 19, 1999. The trial court denied the motion to determine applicability or declare statute unconstitutional and noted that the petitioner reserved his right to appeal the denial of the motion (R 54-55).

Defense counsel advised the court that the petitioner was going to enter a plea pursuant to previous negotiations (R 56)[1].

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[1] Plea form reflects pleas of no contest to counts 1,2, and 3 in case 98-07027 with the state agreeing to drop count 4, admitting the violation of probation in case 98-02423 for a prison releasee reoffender sentence of 5 years imprisonment reserving the right to

A plea colloquy followed (R 56-64).

The sentencing hearing was conducted on May 6, 1996. The court sentenced the petitioner to 5 years imprisonment as a prison releasee reoffender for count 1 - attempted robbery and to time served on counts 2 and 3 on the charges in case 98-07027 (R 72-73). On the violation of probation (case 98-02423), the court sentenced the appellant to 14.7 months imprisonment on the burglary charge to run concurrently with the PRR sentence (R 74).

The petitioner appealed his sentence as a prison releasee reoffender to the Second District Court of Appeals. Petitioner attacked the constitutionality of the prison releasee reoffender act. The Second District in Williams v. State, No. 2D99-1984 (Fla. 2d DCA February 18, 2000) rendered a per curiam affirmed decision which cites as controlling authority the case of Grant v. State, 745 So.2d 519 (Fla. 2d DCA 1999) [copy attached]. Petitioner subsequently filed a notice seeking discretionary review with this Court

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appeal the denial of the motion to declare the PRR statute unconstitutional (R 100-104)

SUMMARY OF THE ARGUMENT

Issue I: Respondent submits that this Court does not presently have jurisdiction in the instant case and will not have jurisdiction unless or until it accepts jurisdiction in the case cited as authority in the Second District's per curiam opinion. Respondent acknowledges that this Court will have 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 if it accepts jurisdiction in the case cited as authority.

Issue II: Initially, respondent submits that this Court should not exercise jurisdiction in the instant case to render a decision on petitioner's argument that the prison releasee reoffender act violates double jeopardy prohibitions because a defendant could be sentenced both as both a prison releasee reoffender and as a habitual felony offender or habitual violent felony offender or as a violent career criminal. This court should not exercise such jurisdiction because petitioner lacks standing to raise this constitutional attack due to the fact that he was only sentenced a prison releasee reoffender and not as any form of habitual offender or violent career criminal. Even if this Court were to determine that petitioner has standing to raise this double jeopardy attack, respondent submits that this Court does not presently have discretionary jurisdiction in the instant

case and will not have jurisdiction unless or until it accepts jurisdiction in the case cited as authority in the Second District's per curiam opinion. Respondent acknowledges that this Court would have 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)(iv) (1999) because the decision expressly and directly conflicts with the decisions of other district courts if it accepts jurisdiction in the case cited as authority, and if it rejects Respondent's lack of standing argument.

ARGUMENT

ISSUE I

WHETHER THE OPINION OF THE SECOND DISTRICT COURT OF APPEAL EXPRESSLY DECLARES A STATUTE VALID, GIVING THE FLORIDA SUPREME COURT DISCRETIONARY JURISDICTION TO REVIEW THE CASE PURSUANT TO FLA. R. APP. PRO. 3.030(a) (2) (A)(i) (1999)

Respondent submits that at the present time, this Court does not have jurisdiction to review the instant decision by the Second District. The opinion of the Second District in Grant v. State, 745 So.2d 519 (Fla. d. DCA 1999), rev. *pending No.* 99-164 (Fla. 2000) is a per curiam citation opinion which states:

> PER CURIAM
>
> Affirmed. See Grant v. State, 24 Fla. L. Weekly D2627 (Fla. d. DCA Nov. 24, 1999).

Petitioner relies upon the reasoning in Jollie v. State, 405 So.d. 418 (Fla. 1981) which states:

> We thus conclude that a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has be reversed by this Court continues to constitute prima facie express conflict and allows this court to exercise its jurisdiction.

In Harrison v. Hyster, 515 So.d. 1279 (Fla. 1987), this Court accepted jurisdiction because another case cited as authority in a per curiam opinion, hereinafter referred to as the "Small case," had a petition for review pending before the Court. This cause reasoned:

> ..[w]e should not have accepted jurisdiction in this case until it was determined to accept jurisdiction in *Small.* *Jollies's* reference to "controlling authority...that is ...pending review" refers to a case in which the petition for jurisdictional review has been granted and the case is pending for disposition on the merits. Since *Small* never reached that status, our accepting jurisdiction in this case was improvidently issued, and we deny the petition for review.

Respondent submits that this Court should not accept jurisdiction in the instant case until it has determined whether it will accept jurisdiction in Grant, *supra*

The respondent acknowledges that the opinion of the Second District Court of Appeal in Grant, *supra.,* expressly declares the Prison Releasee Reoffender Statute (s. 775.082(8), Fla. Stat. (1997) to be valid and in doing so rejected constitutional attacks on the statute based upon: (1) the single subject rule (2) violation of separation of powers (3) cruel and unusual punishment (4) vagueness (5) due process (6) equal protection and (7) ex post facto, and (8) double jeopardy. This Court, therefore, has discretionary jurisdiction pursuant to Fla. R. App. Pro 3.030(a)(2)(A) (I) (1999) to review the instant case if and when it should decide to accept jurisdiction in Grant, *supra..*

Numerous cases are presently pending before this Court regarding the validity of this statute based upon the constitutional grounds raised by the petitioner. This Court has already heard oral arguments regarding these issues in this case

on November 3, 1999, in the cases of McKnight v. State, 727 So.d. 314 (Fla. 3d DCA 1999), *rev. granted* 740 So.d. 528, and Cotton v. State, **728** So.d. 251 (Fla. d. DCA 1998), rev. *granted 737* So.d. 551 (Fla. 1999)

ISSUE II

WHETHER THE DISTRICT COURT'S OPINION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS FROM OTHER DISTRICT COURTS ON THE ISSUE OF WHETHER SENTENCING A DEFENDANT AS BOTH A PRISON RELEASEE REOFFENDER AND AS A HABITUAL FELONY OFFENDER VIOLATES THE PROHIBITION AGAINST GIVING THE FLORIDA SUPREME COURT DISCRETIONARY JURISDICTION PURSUANT TO FLA. R. APP. PRO. 3.030(a)(2)(A)(iv) (1999)

Initially, respondent submits that this Court should decline to review this double jeopardy attack upon the prison releasee reoffender act because the petitioner lacks standing to raise this issue due to the fact that he was not sentenced as both a prison releasee reoffender and as a habitual felony/ violent felony or violent career criminal; he was only sentenced a prison releasee reoffender, As the First District Court of Appeals stated in Crump v. State, 746 So.2d 558, 559 (Fla. 1st DCA 1999):

> [t]he appellant contends that the statute violates double jeopardy because nothing in the statutory language forecloses a defendant from being both habitualized under section 775.084, Florida Statutes, and sentenced **as** a prison releasee reoffender. **But appellant** lacks **standing to present this argument because he was not sentenced** as a **habitual felony offender. See**

Waterman v. State, 654 So.2d 150 (Fla. 1st DCA 1995).

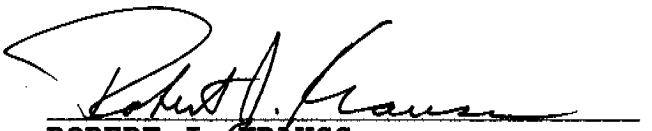
Based upon the reasoning in Crump, *id.,* respondent submits that petitioner lacks standing to raise this allegedly potential double jeopardy problem.

This Court, therefore, would have discretionary jurisdiction pursuant to Fla. R. App. Pro. 3.030(a)(2)(A)(iv) (1999), but only if and when it should decide to accept jurisdiction to review Grant, *supra*, based upon the procedural argument set forth by respondent in issue I., and if this Court rejects Respondent's lack of standing argument.

CONCLUSION

Respondent respectfully requests that this Court deny review in the instant case for the reasons stated above herein..

Respectfully submitted,



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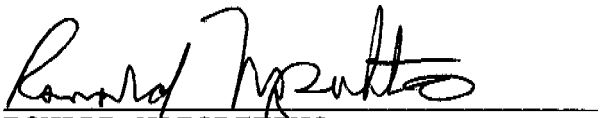

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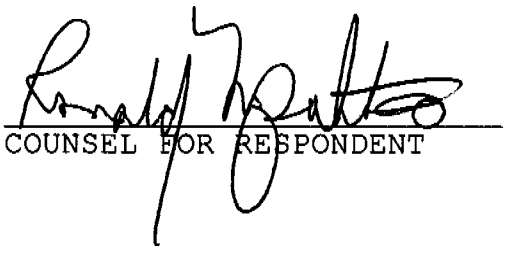
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Joan Fowler, Assistant Public Defender, P.O. Box 9000—Drawer PD, Bartow, Florida 33831, this -13th day of April, 2000.



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