IN THE SUPREME COURT OF FLORIDA

WARNELL ROBINSON,	:	
Petitioner,	:	
VS.	:	CASE NO. SC00-638
STATE OF FLORIDA,	:	
Respondent.	:	
_______________________________	:	

INITIAL BRIEF OF PETITIONER ON THE MERITS

I PRELIMINARY STATEMENT AND CERTIFICATION OF FONT AND TYPE SIZE

This is an appeal from the decision of the First District Court of Appeal, which affirmed petitioner's convictions and sentences, but certified a question on the prison releasee reoffender sentence. Robinson v. State, 751 So.2d 737 (Fla. 1st DCA Feb. 21, 2000).

Petitioner will be referred to as such or by name; respondent will be referred to as the state.

The record will be referred to as "R" and the sentencing transcript as "Sent."

This brief is typed in Courier New 12.

II STATEMENT OF THE CASE AND FACTS

Petitioner, Warnell Robinson, was convicted of battery on a law enforcement officer and resisting arrest with violence, for which he was sentenced as a prison releasee reoffender to 4 years each count, consecutive, for a total of 8 years. His guidelines sentence would have been 54.3 months (Sent 28). The First District Court of Appeal certified a question on the constitutionality of the reoffender statute. The offenses allegedly occurred June 13, 1997.

III SUMMARY OF THE ARGUMENT

Issue I: The Prisoner Releasee Reoffender Act (PRRA) violates separation of powers under article II, section 3, of the Florida Constitution because it effectively delegates to the state attorney the inherent judicial function of imposing sentence while prohibiting the court from exercising sentencing discretion. This defect can be remedied by interpreting the PRRA as directory rather than mandatory on the court.

Issue II: The Prisoner Releasee Reoffender Act violates the single-subject restriction of article III, section 6, of the Florida Constitution.

IV ARGUMENT

ISSUE I

SECTION 775.082(8) OF THE FLORIDA STATUTES, KNOWN AS THE PRISON RELEASEE REOFFENDER LAW, IS AN UNCONSTITUTIONAL ACT OF THE LEGISLATURE BECAUSE IT DELEGATES JUDICIAL SENTENCING POWER TO THE STATE ATTORNEY, IN VIOLATION OF ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION.

This issue is already pending in this court in numerous cases, beginning with Woods v. State, 740 So.2d 20 (Fla. 1st DCA), review granted, 740 So.2d 529 (Fla. 1999); see also, Turner v. State, 745 So.2d 535 (Fla. 1st DCA 1999); Durden v. State, 743 So.2d 77 (Fla. 1st DCA 1999), review granted, 751 So.2d 1251 (Fla. Jan. 6, 2000).

Florida's Constitution says in article II, section 3, that the powers of state government shall be divided into legislative, executive and judicial branches and that "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

With that in mind, petitioner asks the court to review section 775.082(8) (Prison Releasee Reoffender Act, hereafter the PRRA), Florida Statutes (1997), particularly the following:

> If the state attorney determines that a defendant is a prison releasee reoffender ... the state attorney **may** seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a pre-ponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eli-gible for sentencing under the sentencing guidelines and **must** be sentenced as fol-lows.... (emphasis added).

This court should note that Robinson was sentenced under the original version of the PRRA and not under the 1999 amendment.

According to this passage, the state attorney has the discretion (may seek) to invoke the sentencing sanctions but, once invoked, the court is required to (must) impose the maximum sentence. In short, the state attorney is free to trigger the law, and by doing so, divest the trial judge of any sentencing discretion. The combination of filing discretion in the state attorney and absence of sentencing discretion in the court means that an officer of the executive branch exercises power which is inherently vested in the judicial branch.

The state attorney is given discretion not to file under the following criteria:

> a. The prosecuting attorney does not have sufficient evidence to prove the highest charge available;
>
> b. The testimony of a material witness cannot be obtained;
>
> c. The victim does not want the offen-der to receive the mandatory prison sen-tence and provides a written statement to that effect; or
>
> d. Other extenuating circumstances exist which preclude the just prosecution of the offender.

§ 775.082(8)(d)1., Fla.Stat.(1997). (This provision was amended in 1999. Ch. 99-188, Laws of Florida.).

The permissive "may" accorded the state attorney contrasts with the mandatory "must" imposed on the court. Subparagraph "d" above affords to the state attorney discretion the court normally employs in sentencing, that is, consideration of

"extenuating circumstances". Conversely, the PRRA prohibits the court from considering such factors.

No doubt the state attorney enjoys broad discretion in charging decisions. State v. Bloom, 497 So.2d 2 (Fla. 1986) (under article II, section 3 of the Florida Constitution, the decision to charge and prosecute is an executive responsibility; a court has no authority to hold pretrial that a capital case does not qualify for the death penalty); Young v. State, 699 So.2d 624, 625 (Fla. 1997) ("[T]he decision to prosecute a defendant as an habitual offender is a prosecutorial function to be initiated at the prosecutor's discretion and not by the court"); State v. Jogan, 388 So.2d 322 (Fla. 3d DCA 1980) (decision to prosecute or nolle pross pretrial is vested solely in the state attorney). When, however, the charging function merges with the sentencing power and both are entrusted to the executive, the separation of powers doctrine is violated.

To clarify the argument here, it is not that the legislature lacks authority to enact a minimum mandatory sentence. Obviously the legislature has that authority. E.g., O'Donnell v. State, 326 So.2d 4 (Fla. 1975)(30-year minimum mandatory sentence for kidnapping is constitutional); Owens v. State, 316 So.2d 537 (Fla. 1975)(upholding minimum mandatory 25-year sentence for capital felony); State v. Sesler, 386 So.2d 293 (Fla. 2d DCA 1980)(legislature authorized to enact 3-year mandatory minimum for possession of firearm). Rather, the argument is that the legislature cannot delegate to the state attorney the

discretion which, once exercised, prohibits the court from performing its inherent judicial function of imposing sentence.

The cases that discuss separation of powers and the sentencing function assume that sentencing is the domain of the courts and that incursions by other branches would be unconstitutional. "[J]udges have traditionally had the discretion to impose any sentences within the maximum or minimum limits prescribed by the legislature." Alphonso Smith v. State, 537 So.2d 982, 985, 986 (Fla. 1989).

Before sentencing guidelines, a sentence could not be appealed successfully if it were within the limits set by statute. The respective domains of the courts and legislature were delineated in Shellman v. State, 222 So.2d 789, 790 (Fla. 2d DCA 1969):

> [T]he fixing of minimum and maximum terms of imprisonment for criminal convictions is exclusively the province of the legisla-ture, and the imposition of punishment within such limitations is a matter for the trial Court in the exercise of its discre-tion, which cannot be inquired into upon the appellate level.

In State v. Benitez, 395 So.2d 514 (Fla. 1981), the court reviewed section 893.135 regarding drug trafficking. That statute provided severe mandatory minimum sentences but had an escape valve permitting the court to reduce or suspend a sentence if the state attorney initiated a request for leniency based on the defendant's cooperation with law enforcement. The defendants contended that the law "usurps the sentencing function from the judiciary and assigns it to the executive branch,

since [its] benefits ... are triggered by the initiative of the state attorney." Id. at 519. Rejecting that argument and finding the statute did not encroach on judicial power, the court said:

> Under the statute, the ultimate decision on sentencing resides with the judge who must rule on the motion for reduction or suspen-sion of sentence. "So long as a statute does not wrest from courts the final dis-cretion to impose sentence, it does not infringe upon the constitutional division of responsibilities." People v. Eason, 40 N.Y. 297, 301, 386 N.Y.S. 673, 676, 353 N.E. 2d 587, 589 (1976) (emphasis in ori-ginal).

395 So.2d at 519.

This court assumed, therefore, that had the statute divested the court of the "final discretion" to impose sentence, it would have violated separation of powers, an implicit recognition that sentencing is an inherent function of the courts.

This court made an identical assumption when the habitual offender law was attacked on separation of powers grounds in Seabrook v. State, 629 So.2d 129, 130 (Fla. 1993):

> ...the trial judge has the discretion not to sentence a defendant as a habitual fel-ony offender. Therefore, petitioner's con-tention that the statute violated the doc-trine of separation of powers because it eprived trial judges of such discretion necessarily fails.

The Third District Court held the same view regarding the mandatory sentencing provisions of the violent career criminal statute, holding it did not violate separation of powers because the trial judge retained discretion to find that such sentencing was not necessary for protection of the public. State v. Meyers, 708 So.2d 661 (Fla. 3d DCA 1998). In the same

vein, this court said in London v. State, 623 So.2d 527, 528 (Fla. 1st DCA), that "[a]lthough the state attorney may suggest that a defendant be classified as a habitual offender, only the judiciary decides whether to classify and sentence the defendant as a habitual offender," review denied, 630 So.2d 1100 (Fla. 1993).

In State v. Cotton, 728 So.2d 251 (Fla. 2d DCA 1998), review granted, 737 So.2d 551 (Fla. 1999), the Second District Court ruled that

> the applicability of the exceptions set out in subsection (d)[of Section 775.082(8)], Florida Statutes] involves a fact-finding function. **We hold that the trial court, not the prosecutor, has the responsibility to determine the facts and to exercise the discretion permitted by the statute. Historically, fact-finding and discretion in sentencing have been the prerogative of the trial court.** (emphasis added)

Cotton affirms the court's authority to make the final sentencing decision, as this Court said of the mandatory sentence for certain drug offenders in Benitez, supra, 395 So.2d at 519, quoting People v. Eason, 40 N.Y. 297, 301, 386 N.Y.S. 673, 676, 353 N.E. 2d 587 589 (1977), that "[s]o long as a statute does not wrest from courts the final discretion to impose sentence, it does not infringe upon the constitutional division of responsibilities" (emphasis in original).

Construed as in Cotton, the PRRA would not violate separation of powers. It would thus be harmonious with the habitual offender and violent career criminal statutes which allow the state to "suggest" sentence enhancement but leaves the

final decision to the court. That scheme does no violence to legislative intent or to the state attorney's recordkeeping function, because the state can decide not to proceed under the PRRA and report its reasons accordingly. The prosecutor cannot, however, usurp the court's authority to determine whether to impose a mandatory sentence when the legislature has created exceptions that must be finally determined by the courts and not by prosecutors.

On the other hand, in McKnight v. State, 727 So.2d 314 (Fla. 3d DCA), review granted, 740 So.2d 528 (Fla. 1999), the Third District upheld the statute as constitutional. First, the court found it was the intent of the legislature to leave trial judges no discretion to avoid imposing sentence under the PRRA. McKnight quoted a staff analysis and a Bill Research and Economic Impact Statement which distinguished the PRRA from habitual offender sentencing, expressly noting that "a court may decline to impose a habitual or habitual violent offender sentence." Id. According to McKnight, therefore:

> [I]t is absolutely clear that the statute . . .provides no room for anything other than the indicated penalties when the state seeks punishment under the statute and successfully carries its burden of proof.

Id.

McKnight says Cotton was wrongly decided because there is no fact-finding in which a trial judge may engage after trial. In other words, the exceptions to the PRRA - problems with weight or sufficiency of the evidence, availability of wit-

nesses, "other extenuating circumstances which preclude the prosecution of the offender" - pertain to legislative intent to prohibit the state attorney from plea bargaining. Thus, the state attorney is permitted to plea bargain only when one or more exception exists.

McKnight also said that, after trial, issues pertaining to sufficiency or weight of the evidence, availability of witnesses, or other extenuating circumstances have been resolved adversely to the defendant, and the trial court has no authority to find any "facts" thereon. The one exception which may remain an open question after trial - and thus open to fact-finding by the court - is whether the victim wants a PRR sentence imposed. The Third District rejected any discretion of the court even on this exception, on the ground it must be read in pari materia with the other exceptions, "all of which are clearly addressed to the state." Id.

McKnight also rejected the separation of powers argument, mentioning in a footnote that federal construction of the separation doctrine is not binding on the states under the Fourteenth Amendment, id. at 441, n.3, but then relying on federal and other state courts which have upheld their own "three-strike" laws against separation of powers attacks. The court held that the decision to seek PRR sentencing is a charging decision - no greater than the power traditionally exercised by the executive branch - not a sentencing decision. Id. at 440, citing United States v. Cespedes, 151 F.3d 1329 (11th Cir.

1998), cert. denied, 525 U.S. 1086, 119 S.Ct. 836, 67 USLW 3436 (Jan. 11, 1999).

There are several flaws in McKnight's analysis. First, assuming arguendo it was the legislature's intent to strip trial courts of discretion to impose anything other than a PRR sentence, the statute must still be constitutional, so finding legislative intent is only a preliminary step.

Second, the Third District gleans McKnight's essential rationale - that the PRRA exceptions exist only to give the prosecutor the authority to plea bargain when an exception applies - from the senate staff analysis. This case amply demonstrates the gap between a staff analysis and actual legislation, when the staff analysis states a legislative intent which is nowhere to be found in the statute itself. Petitioner contends that McKnight is flawed in finding legislative intent in staff analyses - which are prepared before the bill is voted on - where the final bill - which is passed into law - does not embody the purported legislative intent.

Petitioner contends McKnight is incorrect in limiting the "extenuating circumstances" exception to prosecutors, without the possibility that trial judges may also find extenuation. The statutory language and principles of statutory construction do not support the Third District's conclusion that all the exceptions are directed exclusively to the prosecutor. Petitioner concedes, for the sake of argument, that sufficiency of the evidence and availability of the witnesses are not issues

which may be addressed by the court after a trial.

The victim's interest, or lack thereof, in having a PRR sentence imposed is a matter which may validly be considered either by the prosecutor in seeking a sentence, or the court in deciding what sentence to impose. McKnight had to resort to the device of reading all the exceptions in pari materia to find that only the prosecutor had such discretion. Petitioner contends, to the contrary, that none of the exceptions are directed exclusively to the prosecutor, thus there is no rational basis for reading the exceptions "in pari materia" to exclude judicial discretion.

In contrast to McKnight's findings as to legislative intent based on prior staff analyses, neither explicitly nor inferentially does the statute itself limit plea-bargaining by the state. Nor does it say anything explicitly about whether its exceptions apply only to the prosecutor, as distinct from the judge. To infer such a distinction requires reading a provision into the statute which is not there.

If rules of statutory construction could be used to discern legislative intent where the staff analysis says one thing and the statute itself says another, the principle would be that the omission was meaningful. That is, the staff analysis expressly stated an intent to prohibit plea-bargaining and at least implied that its exceptions were directed to the prosecutor. Given this expression of intent before the bill became law, the omission from the bill passed into law of a prohibi-

tion against plea-bargaining or a direction that its exceptions were available to the prosecutor only and not the judge, must be viewed as intentional. The intentional omission therefor means a) no prohibition against plea bargaining exists, b) the exceptions are not limited to the prosecutor as opposed to the judge, and c) when the bill finally passed into law, the legislature expressed no such prohibition or limitation.

McKnight's citation to Cespedes, supra, is misleading, as it fails to distinguish between a true charging decision by the state, with an incidental or limited effect on the sentence to be imposed, and a sentencing decision by the prosecutor.

Procedurally, the federal enhancement statute at issue in Cespedes requires the U.S. Attorney to file an information, that is, to make a charging decision which has no analog in Florida's PRRA. Cespedes argued that the statute "affords prosecutors unbridled discretion to fix the statutory sentence, a legislative power." 151 F.3d at 1332. The court held otherwise that the effect of filing an information only altered the range of sentences available to the trial court by increasing the mandatory minimum sentence, from 10 years to life unenhanced, to 20 years to life, if validly enhanced.

The court categorized this as "the prosecutor's ability to influence the sentence through the charging decision," as for example, where a prosecutor may make the purely discretionary choice to charge a defendant under either of two statutes which have identical elements but different maximum penalties. Id.

at 1332. In the case of Cespedes' enhancement, "the filing of an information is in no sense a predetermination of the ultimate sanction by the prosecutor." Id. at 1334-35.

In sharp contrast, the PRRA does not merely limit the judge's sentencing discretion as in Cespedes, it obliterates it. If - as McKnight holds - a PRR sentence is mandatory, then the prosecutor who seeks one **does** predetermine the ultimate sanction, unlike Cespedes. Yet, McKnight failed to acknowledge this crucial distinction.

Moreover, fact-finding for sentencing - the issue under the PRRA - is not analogous to a charging decision involving prior convictions like that in Cespedes. In Cespedes, the sentencing determination was distinct from the information alleging the substantive crime; there is no analogous distinction here. Cespedes is inapposite and should not control this court's decision. Nor does it truly support the proposition for which it was relied upon in McKnight.

McKnight also rejected a due process claim. The Third District spent most of the opinion explaining why there is no constitutional obstacle to the trial judge having no discretion but to impose a PRR sentence when requested by the state. Yet, when it reached the due process claim, the court said, "the decision to sentence the defendant as a PRR is exclusively within the discretion of the sentencing judge." Id. Undersigned counsel is not certain what this means, but in context, it appears to mean that the judge retains jurisdiction to

determine whether a defendant meets the quantifiable criteria, that is, whether he or she was released from prison within 3 years of committing a new offense. In context, it does **not** appear to mean the judge has discretion to determine whether - qualitatively - the defendant and his or her crime should be subject to the sentence enhancement.

With all due respect, the due process portion of McKnight seems to be disingenuous, as it claims a defendant is provided due process by the ability to argue that he or she does not actually qualify - that is, quantitatively - for sentencing under the PRRA. The problem with the statute is not that some defendants who do not meet the criteria might be sentenced thereunder. Almost any defense attorney with a pulse could make that argument. Rather, the problem is with the qualitative analysis. Of those defendants who technically qualify, who should be sentenced under the statute, and who decides - the prosecutor or the judge?

Finally, McKnight did not address whether the statute violated the single subject rule, which is argued in Issue II, infra.

If the PRRA were interpreted as the Third District did in McKnight, then by passing the PRRA, the legislature crossed the line dividing the executive from the judiciary. The prosecutor was given power to require the court to impose a maximum sentence and to prevent the court from exercising judicial discretion to impose any less. No other law goes as far. While the

court retains the technical job of pronouncing sentence, it is reduced to performing a ministerial duty. The court is left with no choice. Presumably, the state could obtain a writ of mandamus to compel the judge to issue a mandatory sentence should the trial court not impose one.[1] Such a result would illustrate dramatically how the PRRA allows excessive executive inroads into judicial domain. The court is obligated to prevent this incursion.

In Walker v. Bentley, 678 So.2d 1265 (Fla. 1996), this Court nullified legislation that took away the circuit court's power to punish indirect criminal contempt involving domestic violence injunctions. In language which applies here, the court said that any legislation which "purports to do away with the inherent power of contempt directly affects a separate and distinct function of the judicial branch, and, as such, violates the separation of powers doctrine...." Id. at 1267. Sentencing, like contempt, is a "separate and distinct function of the judicial branch" and should be accorded the same protection.

Authority to perform judicial functions cannot be delegated. In re Alkire's Estate, 198 So.475, 482, 144 Fla. 606, 623 (1940) (supplemental opinion):

> The judicial power[s] in the several courts vested by [former] Section 1, Article V, ... **are not delegable**

---

[1] Kurtis Smith v. State, 696 So.2d 814 (Fla. 2 DCA 1997)(a party requesting mandamus must establish a clear legal right to the act, a clear legal duty on the official to perform it, and no adequate remedy at law).

and cannot be abdi-cated in whole or in part by the courts (emphasis added).

More specifically, the legislature has no authority to delegate to the state attorney, as a function of the executive branch, the inherent judicial power to impose sentence. Accord, Gough v. State ex rel. Sauls, 55 So.2d 111, 116 (Fla. 1951) (legislature without authority to confer on the Avon Park City Council the judicial power to determine the legality or validity of votes cast in a municipal election). Applying that principle here, the PRRA wrongly assigns to the state attorney the discretion to deprive the court of power to impose a sentence that differs from the statutory mandates. Stated differently, the legislature gave the executive branch exclusive control of when the court may or may not make a sentencing decision.

Assuming the PRRA means what it appears to say, that the state attorney has sole discretion and thereafter the court has none, two options are available. One, this court can find that the Legislature intended "may" instead of "must" when describing the trial court's sentencing authority. Two, this court can decide the PRRA is mandatory on the trial court but is invalid for that reason. Since it is preferable to save a statute whenever possible, the more prudent course would be to interpret legislative intent as not foreclosing judicial sentencing discretion.

Construing "must" as "may" is a legitimate curative for legislation that invades judicial territory. In Simmons v. State, 160 Fla. 626, 36 So.2d 207 (1948), a statute said trial

judges "must" instruct juries on the penalties for the offense being tried. This Court held that jury instructions had to be based on the evidence as determined by the courts. Since juries did not determine sentences, the legislature could not require that they be instructed on penalties. The court held, therefore, that "the statute in question must be interpreted as being merely directory, and not mandatory." 160 Fla. at 630, 36 So.2d at 209. Otherwise, the statute would have been "such an invasion of the province of the judiciary as cannot be tolerated without a surrender of its independence under the constitution." Id at 629, 36 So.2d at 208, quoting State v. Hopper, 71 Mo. 425 (1880).

In Walker v. Bentley, 678 So. 2d at 1267, this court saved an otherwise unconstitutional statute, saying

> "**By interpreting the word 'shall' as direc-tory only, we ensure that circuit court judges are able to use their inherent power of indirect criminal contempt to punish domestic violence injunctions when neces-sary while at the same time ensuring that section 741.30 as a whole remains intact**". (emphasis added).

See also, Burdick v. State, 594 So.2d 267 (Fla. 1992)(construing "shall" in habitual offender statute to be discretionary rather than mandatory); State v. Brown, 530 So.2d 51 (Fla. 1988)(same); State v. Hudson, 698 So.2d 831, 833 (Fla. 1997) ("Clearly a court has discretion to choose whether a defendant will be sentenced as an habitual felony offender ....[W]e conclude that the court's sentencing discretion extends to determining whether to impose a mandatory minimum term").

As in the cases cited above, the PRRA need not fail con-

stitutional testing if construed as permissive rather than mandatory. But if the PRRA is interpreted as bestowing on the state attorney all discretion, and eliminating any from the courts, it cannot stand.

The PRRA limits the court to determining whether a qualifying substantive law has been violated (after trial or plea) and whether the offense was committed within 3 years of release from a state correctional institution. Beyond that, the PRRA purports to bind the court to the choice made by the state attorney. While the legislature could have imposed a mandatory prison term, as in the firearm or capital felony offenses, or left the final decision to the court, as in the habitual offender and career criminal laws, the PRRA unconstitutionally vested in the state attorney the discretionary authority to strip the court of its inherent power to sentence. That feature distinguishes the PRRA from all other sentencing schemes in Florida.

Should this court decide that the trial judge had discretion not to impose the sentence mandated by the PRRA, a remand is required for the trial judge to reconsider the disposition free of statutory restrictions. Having declared the statute constitutional, the trial judge may have believed he did not have any discretion but to impose a PRRA sentence. The difference between the 8-year sentence imposed and the guidelines sentence of 54 months was substantial.

ISSUE II

BY INCLUDING MULTIPLE UNRELATED SUBJECTS IN ONE ACT, THE LEGISLATION WHICH BECAME THE PRISON RELEASEE REOFFENDER LAW VIOLATED ARTICLE III, SECTION 6, OF THE FLORIDA CONSTITUTION.

The First District Court has rejected this argument, but this court has granted review. Lamarian Jackson v. State, 744 So.2d 466 (Fla. 1st DCA 1999), review granted, 749 So.2d 503 (Fla. Dec. 15, 1999).

The Prison Releasee Reoffender Act (PRRA), section 775.-082(8), Florida Statutes (1997) violates the single-subject rule, as set out in article III, section 6, of the Florida Constitution:

> Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

The legislation challenged in this case was passed as Chapter 97-239, Laws Of Florida. It became law without the signature of the Governor on May 30, 1997. Chapter 97-239 created the PRRA, which was codified in section 775.082(8). In addition, the same session law amended or created sections 944.705, 947.141, 948.06, 948.01, and 958.14, Florida Statutes (1997). These provisions concern matters ranging from whether a youthful offender shall be committed to the custody of the department, to when a court may place a defendant on probation or in community control if the person is a substance abuser. See, §§ 948.01 and 958.14. Other subjects included expanding the category of persons authorized to arrest a probationer or person on community control for violation. § 948.06.

The only portion of the legislation that relates to the same subject matter as sentencing prison releasee reoffenders is section 944.705, requiring the Department Of Corrections to notify every inmate of the provisions relating to sentencing if the PRRA is violated within three years of release. None of the other subjects in the PRRA is reasonably connected or related and not part of a single subject.

In Bunnell v. State, 453 So. 2d 808 (Fla. 1994), this Court struck an act for containing two subjects. Citing Kirkland v. Phillips, 106 So. 2d 909 (Fla. 1959), the court noted that one purpose of the constitutional requirement was to give fair notice concerning the nature and substance of the legislation. However, even if the title of the PRRA gives fair notice, as did the legislation in Bunnell, another requirement is to allow intelligent lawmaking and to prevent log-rolling of legislation. State ex. rel. Landis v. Thompson, 120 Fla. 860, 163 So. 270 (1935) and Williams v. State, 100 Fla. 1054, 132 So. 186 (1930). Legislation that violates the single subject rule can become a cloak within which dissimilar legislation may be passed without being fairly debated or considered on its own merits. State v. Lee, 356 So. 2d 276 (Fla. 1978).

Burch v. State, 558 So. 2d 1 (Fla. 1990), does not apply because, although complex, the legislation there was designed to combat crime through fighting money laundering and providing education programs to foster safer neighborhoods. The means by which this subject was accomplished involved amendments to

several statutes, which by itself does not violate the single subject rule. Id.

Chapter 97-239, Laws Of Florida, not only creates the PRRA, it also amends section 948.06, to allow "any law enforcement officer who is aware of the probationary or community control status of [a] probationer or offender in community control" to arrest said person and return him or her to the court granting such probation or community control. This provision has no logical connection to the creation of the PRRA, and, therefore, violates the single subject requirement.

An act may be as broad as the legislature chooses, provided the matters included in the act have a natural or logical connection. Chenoweth v. Kemp, 396 So. 2d 1122 (Fla. 1981). See also State v. Johnson, 616 So. 2d 1 (Fla. 1993)(chapter law creating the habitual offender statute violated single subject requirement). Giving any law enforcement officer who is aware that a person is on community control or probation the authority to arrest that person has nothing to do with the other purpose of the PRRA. Chapter 97-239, therefore, violates the single subject requirement, and this issue remains ripe until the 1999 biennial adoption of the Florida Statutes. Id.; but see, Chapter 98-204, section 10, at 1964-68, Laws of Fla., reenacting the releasee reoffender statute, effective October 1, 1998.

The statute here is less comprehensive in total scope than the one approved in Burch, but its subject is broader. It

violates the single subject rule because the provisions dealing with probation violation, arrest of violators, and forfeiting gain time for violations of controlled release are matters not reasonably related to a specific mandatory punishment provision for persons convicted of certain crimes within three years of release from prison. If the single subject rule means only that "crime" is a subject, then the legislation can pass review, but that is not the rationale utilized by this court. The proper manner of review is to consider the purpose of the various provisions and the means provided to accomplish those goals. When so viewed, it is apparent the legislation contains several subjects.

The session law at issue here is in violation of the single subject rule, just as the one which created the violent career criminal penalty violated the single subject rule.

In State v. Thompson, 750 So.2d 643 (Fla. 1999), this court held that the session law which created the violent career criminal sentencing scheme, Chapter 95-182, Laws of Florida, was unconstitutional as a violation of the single-subject rule, because it combined the creation of the career criminal sentencing scheme with civil remedies for victims of domestic violence:

> After reviewing the various sections of chapter 95-182, we find it clear that those sections address two different subjects: career criminals and domestic violence. The State argues that the subject of chapter 95-182 is the penalties to be imposed upon recidivist criminal offenders, and the object is to reduce crime by impos-ing more severe sanctions on those criminal offenders. However, as the Second

> District observed: "Nothing in sections 2 through 7 addresses any facet of domestic violence and, more particularly, any civil aspect of that subject. Nothing in sections 8 through 10 addresses the subject of career criminals or the sentences to be imposed upon them." Thompson, 708 So.2d at 317. We agree with the Second District's obser-vation.

750 So.2d at 647-48.

The court held that the chapter law was similar to other laws that the court had found to violate the single-subject rule. Id. For example, when the 1989 legislature amended the habitual violent offender statute in the same session law with statutes concerning repossession of personal property, the courts held the '89 session law violated the single-subject rule. Johnson v. State, 589 So. 2d 1370 (Fla. 1st DCA 1991), app'd 616 So. 2d 1 (Fla. 1993); Claybourne v. State, 600 So. 2d 516 (Fla. 1st DCA 1992), app'd 616 So. 2d 5 (Fla. 1993); and Garrison v. State, 607 So. 2d 473 (Fla. 1st DCA 1992), app'd 616 So. 2d 993 (Fla. 1993).

Robinson's releasee reoffender sentence affects the length of time he must serve and affects his fundamental liberty interests: "Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence." § 775.082-(8)(b), Fla.Stat. (1997). It must be vacated.

VI CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this Court reverse his sentences for imposition of a non-PRR sentence.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

____
KATHLEEN STOVER
Fla. Bar No. 0513253
Assistant Public Defender
Leon County Courthouse
301 S. Monroe, Suite 401
Tallahassee, Florida 32301
(850) 488-2458

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Charmaine Millsaps, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, Florida, and a copy has been mailed to Mr. Warnell Robinson, inmate no. 563900, Calhoun Correctional Institution, Route 2, Box 1, Blountstown, FL 32424, _____ day of April, 2000.

____
KATHLEEN STOVER

IN THE SUPREME COURT OF FLORIDA

WARNELL ROBINSON,	:	
Petitioner,	:	
v.	:	CASE NO. SC00-638
STATE OF FLORIDA,	:	
Respondent.	:	

______________________________/

INITIAL BRIEF OF PETITIONER ON THE MERITS

NANCY A. DANIELS

PUBLIC DEFENDER

SECOND JUDICIAL CIRCUIT

KATHLEEN STOVER

ASSISTANT PUBLIC DEFENDER

FLORIDA BAR NO. 0513253

LEON COUNTY COURTHOUSE

SUITE 401

301 SOUTH MONROE STREET

TALLAHASSEE, FLORIDA 32301

(850) 488-2458

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

PAGE(S
)

TABLE OF CONTENTS i

TABLE OF CITATIONS ii-vi

I PRELIMINARY STATEMENT 1

II STATEMENT OF THE CASE AND FACTS 2

III SUMMARY OF THE ARGUMENT 2

IV ARGUMENT

ISSUE I

SECTION 775.082(8) OF THE FLORIDA STATUTES, KNOWN AS THE PRISON RELEASEE REOFFENDER LAW, IS AN UNCONSTITUTIONAL ACT OF THE LEGISLATURE BECAUSE IT DELEGATES JUDICIAL SENTENCING POWER TO THE STATE ATTORNEY, IN VIOLATION OF ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION. 3

ISSUE II:

BY INCLUDING MULTIPLE UNRELATED SUBJECTS IN ONE ACT, THE LEGISLATION WHICH BECAME THE PRISON RELEASEE REOFFENDER LAW VIOLATED ARTICLE III, SECTION 6, OF THE FLORIDA CONSTITUTION. 21

VI CONCLUSION 27

CERTIFICATE OF SERVICE 27

TABLE OF CITATIONS

CASE	PAGE(S)
In re Alkire's Estate 198 So. 475, 144 Fla. 606 (1940)	17
Bunnell v. State 453 So.2d 808 (Fla. 1994)	22
Burch v. State 558 So.2d 1 (Fla. 1990)	23,24
Burdick v. State 594 So.2d 267 (Fla. 1992)	18
Chenowith v. Kemp 396 So.2d 1122 (Fla. 1981)	23
Claybourne v. State 600 So.2d 516 (Fla. 1st DCA 1992), approved, 616 So.2d 5 (Fla. 1993)	26
Durden v. State 743 So.2d 77 (Fla. 1st DCA 1999), review granted, 751 So.2d 1251 (Fla. Jan. 6, 2000)	3
Garrison v. State 607 So.2d 473 (Fla. 1st DCA 1992), approved, 616 So.2d 993 (Fla. 1993)	26
Gough v. State ex rel. Sauls 55 So.2d 111 (Fla. 1951)	17
Jackson v. State 744 So.2d 466 (Fla. 1st DCA 1999), review granted, 749 So.2d 503 (Fla. Dec. 15, 1999)	21
Johnson v. State 589 So.2d 1370 (Fla. 1st DCA 1991), approved, 616 So.2d 1 (Fla. 1993)	26
Kirkland v. Phillips 106 So.2d 909 (Fla. 1959)	22
London v. State 623 So.2d 527 (Fla. 1st DCA), review denied, 630 So.2d 1100 (Fla. 1993)	8

McKnight v. State
727 So.2d 314 (Fla. 3d DCA), review granted,740 So.2d 528 (Fla. 1999)
9,passim

O'Donnell v. State
326 So.2d 4 (Fla. 1975) 5

Owens v. State
316 So.2d 537 (Fla. 1975) 5

People v. Eason
40 N.Y. 297, 386 N.Y.S. 673, 353 N.E. 2d 587 (1977) 8

Robinson v. State
751 So.2d 737 (Fla. 1st DCA Feb. 21, 2000) 1

Seabrook v. State
629 So.2d 129 (Fla. 1993) 7

Shellman v. State
222 So.2d 789 (Fla. 2d DCA 1969) 6

Simmons v. State
160 Fla. 626, 36 So.2d 207 (1948) 18

Smith v. State
537 So.2d 982 (Fla. 1989) 6

Smith v. State
696 So.2d 814 (Fla. 2d DCA 1997) 16

State v. Benitez
395 So.2d 514 (Fla. 1981) 6,7,8

State v. Bloom
497 So.2d 2 (Fla. 1986) 5

State v. Brown
530 So.2d 51 (Fla. 1988) 19

State v. Sammy Cotton
728 So.2d 251 (Fla. 2d DCA 1998), review granted, 737 So.2d 551 (Fla. 1999) 8,9,10

State v. Hopper
71 Mo. 425 (1880) 18

State v. Hudson
698 So.2d 831 (Fla. 1997) 19

State v. Jogan
388 So.2d 322 (Fla. 3d DCA 1980) 5

State v. Johnson
616 So.2d 1 (Fla. 1993) 23

State ex rel. Landis v. Thompson
120 Fla. 860, 163 So. 270 (1935) 22

State v. Lee
356 So.2d 276 (Fla. 1978) 23

State v. Meyers
708 So.2d 661 (Fla. 3d DCA 1998) 8

State v. Sesler
386 So.2d 293 (Fla. 2d DCA 1980) 5

State v. Thompson
750 So.2d 643 (Fla. 2d DCA), review granted, 717 So.2d 538 (Fla. 1998) 24,26

Turner v. State
745 So.2d 535 (Fla. 1st DCA 1999) 3

United States v. Cespedes
151 F.2d 1329 (11th Cir. 1998), cert. denied, ___ U.S. ___, 119 S.Ct. 836 (1999) 11,13,14

Walker v. Bentley
678 So.2d 1265 (Fla. 1996) 16,18

Williams v. State
100 Fla. 1054, 132 So. 186 (1930) 22

Woods v. State
740 So.2d 20 (Fla. 1st DCA), review granted, 740 So.2d 529 (Fla. 1999) 3

Young v. State
699 So.2d 624 (Fla. 1997) 5

STATUTES

Section 775.082(8), Florida Statutes (1997) 3,21

Section 775.082(8)(b), Florida Statutes (1997) 26

Section 775.082(8)(d)1., Florida Statutes(1997) 4

Section 944.705, Florida Statutes (1997) 21

Section 947.141, Florida Statutes (1997) 21

Section 948.01, Florida Statutes (1997) 21,22

Section 948.06, Florida Statutes (1997)
21,22,23

Section 958.14, Florida Statutes (1997) 21,22

CONSTITUTIONS

Article II, Section 3, Florida Constitution 3,5

Article III, Section 6, Florida Constitution 2,21

OTHER AUTHORITIES

Chapter 95-182, Laws of Florida

Chapter 97-239, Laws of Florida 21,23

Chapter 98-204, Section 10, Laws of Florida 24

Chapter 99-188, Laws of Florida 4