

2000-66

IN THE SUPREME COURT OF FLORIDA

ANTHONY A. SUTTON,
Petitioner,

vs.

Case No. [DCA #99-1610]

STATE OF FLORIDA, :
Respondent. :

FILED
DEBBIE CAUSSEUX
JAN 13 2000
CLERK, SUPREME COURT
BY DJ

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

BRIEF OF PETITIONER ON JURISDICTION.

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

ALLYN M. GIAMBALVO
Assistant Public Defender
FLORIDA BAR NUMBER 0239399

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33831
(941) 534-4200

ATTORNEYS FOR PETITIONER

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STATEMENT REGARDING TYPE

Petitioner's brief is prepared in Courier 12 point.

STATEMENT OF THE CASE AND FACTS

The State Attorney for the Tenth Judicial Circuit, Polk County, Florida, filed an information charging petitioner, Anthony Sutton with two counts of aggravated assault. Subsequently, appellant entered a nolo contendere plea in exchange for a five year concurrent sentence as a prison releasee reoffender and the State's promise not to upgrade the charges to robbery or seek habitual violent felony offender sentencing.

At petitioner's sentencing hearing on March 26, 1999, defense counsel filed a motion to have the prison releasee reoffender act declared unconstitutional. The trial court denied the motion. The court then sentenced petitioner to five years concurrent on each count as had been previously agreed upon. Thereafter, petitioner filed a notice of appeal to the District Court of Appeal, Second District. In its opinion of December 22, 1999, the Second District affirmed petitioner's conviction and sentence citing Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999). [See appendix] Petitioner has filed his notice to invoke the discretionary review of this court and now files this jurisdictional brief.

SUMMARY OF THE ARGUMENT

This court has discretion to review petitioner's case pursuant to Fla. R. App. Pro. 9.030 (2) (A) (i) as being a decision of a district court of appeal that expressly declares valid a state statute.

ARGUMENT

ISSUE

THIS COURT HAS DISCRETIONARY JURISDICTION TO REVIEW PETITIONER'S CASE, AS THE DISTRICT COURT'S OPINION CITED TO A PRIOR OPINION OF THE COURT EXPRESSLY DECLARING VALID THE PRISON RELEASEE REOFFENDER ACT.

Petitioner's case involves the legal issue of whether the prison releasee reoffender act is unconstitutional. In Grant v. State, 24 Fla. L. Weekly D2627 (Fla. 2d DCA Nov. 24, 1999), the District Court of Appeal, Second District, expressly held that the prison releasee reoffender act **was** constitutionally valid. Petitioner raised the identical issue in his appeal to the Second District and the court's opinion affirming his judgment and sentence cited to the Grant case.

In Jollie v. State, 405 So. 2d 418 (Fla. 1981) this court held that a district court of appeal's per curiam opinion which cited as controlling authority a decision that constituted prima facie express conflict would allow this court to exercise its discretionary jurisdiction. The same rationale would equally apply where the cited case expressly declares a state statute to be valid, which is an additional basis for discretionary review under 9.030 Fla. R. App. Pro. Furthermore, the Second District's opinion in Grant is currently pending review before this court.

CONCLUSION

Petitioner asks this court to exercise its discretionary review in this case.

APPENDIX

PAGE NO.

1. The opinion of the Second District Court
of Appeal filed on December 22, 1999.

1

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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

ANTHONY A. SUTTON,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)

Case No. 99-01610

Opinion filed December 22, 1999.

Appeal from the Circuit Court for Polk
County; James Michael Hunter, Judge.

James Marion **Moorman**, Public Defender,
and **Allyn M. Giambalvo**, Assistant Public
Defender, Bat-tow, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Angela D. **McCrary**,
Assistant Attorney General, Tampa, for
Appellee.

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DEC 22 1999

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PER CURIAM.

Affirmed. See Grant v. State, 24 Fla. L. Weekly 02627 (Fla. 2d DCA Nov.
24, 1999).

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Angela McCravy, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this 11 day of January, 2000.

Respectfully submitted,

Allyn Giambalvo

JAMES MARION MOORMAN
Public Defender
Tenth Judicial Circuit
(941) 534-4200

ALLYN M. GIAMBALVO
Assistant Public Defender
Florida Bar Number 0239399
P. O. Box 9000 - Drawer PD
Bartow, FL 33831

/amg