IN THE SUPREME COURT OF FLORIDA

JOHNNY BAGGETT,

Petitioner,

v. CASE NO. SC00-83

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

The Prison Releasee Reoffender Act does not violate the separation of powers doctrine. Setting mandatory sentences is a proper matter for the legislature, and enforcing such a statute is a proper matter for the executive. Contrary to Baggett's argument, the statutory scheme does not make the prosecutor or the victim the sentencing entity. The trial court still fulfills its proper role -- deciding whether the defendant is eligible for this sentencing enhancement and imposing the sentence itself.

The Prison Releasee Reoffender Act is a rational exercise of the legislature's power to punish criminals. It was enacted in full compliance with the single subject rule, and its provisions are adequately defined. Baggett's due process and equal protection claims are without merit.

ARGUMENT

THE PRISON RELEASEE REOFFENDER ACT IS CONSTITUTIONAL.

Concerned about the early release of felony offenders and the resulting impact on Florida's residents and visitors when such offenders continue to prey upon society, the legislature determined that public safety could best be ensured by providing for lengthy mandatory sentences for those who commit new serious felonies upon their release from prison. Accordingly, the Prison Releasee Reoffender Punishment Act was enacted, effective May 30, 1997. Ch. 97-239, Laws of Florida.

Under this statute, an individual who commits certain enumerated violent felonies within three years of being released from prison must be sentenced to the statutory maximum term of imprisonment. § 775.082(8), Fla. Stat. (1997).

Baggett contends that the Prison Releasee Reoffender Act is unconstitutional, as it violates the separation of powers doctrine. According to Baggett, the legislature has improperly delegated the sentencing power of the judiciary to the executive. In other words, by invoking the mandatory penalties required by the statute, the executive has become the sentencing entity. This claim must be rejected.

First of all, it is well-established that setting penalties for crimes is a matter of substantive law within the power of the legislature. McKendry v. State, 641 So. 2d 45, 47 (Fla. 1994); Smith v. State, 537 So. 2d 982, 985 (Fla. 1989). Accordingly, arguments that mandatory sentences violate the separation of powers doctrine have been uniformly rejected by this Court. See, e.g., Lightbourne v. State, 438 So. 2d 380, 385 (Fla. 1983), cert. denied, 465 U.S. 1051 (1984); Scott v. State, 369 So. 2d 330, 331 (Fla. 1979); Sowell v. State, 342 So. 2d 969 (Fla. 1977).

Baggett's argument that the mandatory sentences for repeat offenders here infringes on the power of the judiciary should likewise be rejected. The legislature acted well within its authority in setting these mandatory sentences.

The statute also sets forth a procedure whereby the executive initiates the sentence enhancement process. Contrary to Baggett's argument, this procedure does not mean that the executive has usurped the power of the judiciary, and it does not make the prosecutor the sentencing entity, as Baggett asserts. While the executive *initiates* the process, it is the court which decides whether the defendant qualifies under the statute, and it is the court which imposes the sentence itself. Cf. Young v. State, 699 So. 2d 624, 625-27 (Fla. 1997) (state attorney has sole authority to initiate habitual offender proceedings).

Baggett's due process argument is therefore also without merit -- he was still sentenced by a neutral judge after a full adversarial proceeding, even though a mandatory sentence was involved. Contrary to Baggett's contention, the trial court is not removed from the sentencing process, and the defendant is not sentenced by the executive. Just as in other statutes providing for mandatory sentences, the trial court impartially decides whether the executive has met its burden of establishing the defendant's eligibility for application of the statute and imposes a sentence accordingly. There is no constitutional right to avoid a mandatory sentence, and the statute does not violate due process.

The Prison Releasee Reoffender Act gives the State Attorney no greater power than that traditionally exercised in the charging decision, and it in no way infringes upon the sentencing power of the judiciary -- which still has to evaluate whether the State has proven that the defendant qualifies for sentencing under the statute and still has to impose the sentence itself. McKnight v. State, 727 So. 2d 314 (Fla. 3d DCA), rev. granted, case #95,154 (Fla. Aug. 19, 1999).

This Court should adopt the well-reasoned decision of the district court in McKnight, and Baggett's separation of powers argument should be rejected. See also Woods v. State, 24 Fla. L. Wkly. D831 (Fla. 1st DCA March 26) (agreeing with McKnight,

rejecting separation of powers challenge to PRR statute), rev. granted, case #95,281 (Fla. Aug. 23, 1999); Speed v. State, 732 So. 2d 17 (Fla. 5th DCA) (same), rev. granted, case # 95,706 (Fla. Sept. 16, 1999).

Baggett alternatively contends that the statute may be saved by giving the trial court the discretion to apply the statutory exceptions to mandatory sentencing. § 775.082(8)(d), Fla. Stat. (1997). This is the position adopted by the Second and Fourth District Courts of Appeal. See State v. Wise, 24 Fla. L. Wkly. D657 (Fla. 4th DCA March 10), rev. granted, case # 95,230 (Fla. Aug. 5, 1999); State v. Cotton, 728 So. 2d 251 (Fla. 2d DCA 1998), rev. granted, 737 So. 2d 551 (Fla. 1999) (case # 94,996).

The State submits that these decisions ignore the clear statutory language, as well as the legislative history of the statute, and should therefore not be followed by this Court.

The statute provides that "[u]pon proof ... that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and *must* be sentenced as follows..." § 775.082(8)(a)(2), Fla. Stat. (1997) (emphasis added). This language clearly provides that sentencing is mandatory, not discretionary.

The legislative history supports such a finding as well. The court in McKnight thoroughly examined the relevant legislative

reports, quoting extensively from staff analysis reports as well as impact statements. These statements clearly reveal that the statute was designed to leave no room for discretion where the State has met its burden of proving that the defendant qualifies for PRR sentencing. 727 So. 2d at 316.

The McKnight court further noted that allowing the statutory exceptions to be applied by the trial court would lead to absurd results. For example, the trial court would be in no position to conclude that prison releasee reoffender sanctions should not be applied because "the testimony of a material witness cannot be obtained" or "other extenuating circumstances ... preclude the just prosecution of the offender." § 775.082(8)(d), Fla. Stat. These statutory exceptions -- including the victim's preference exception -- obviously apply to the decision of the prosecuting attorney, not the trial court.[1] Accordingly, the trial court's role is clearly mandatory. Id. at 317.

This Court should reject Baggett's argument that the trial court is not required to follow the clear statutory mandate.

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[1]The exceptions provide reasons for the prosecuting attorney to decline to apply the statutory mandate. Of course, the prosecutor is not *required* to forgo PRR sentencing any time one of these exceptions apply. Rather, such a decision is left to his or her discretion. Clearly, then, the victim has *not* been given the power to sentence, as Baggett claims. The victim's wishes are merely something to be considered by the prosecutor.

Baggett next contends that the statute violates double jeopardy, because it "appears" to allow sentencing as both a prison releasee reoffender and a career criminal or habitual offender.

Under section 924.051(3) of the Florida Statutes, a defendant is precluded from raising any errors, including sentencing errors, which were not properly preserved below. Proper preservation, of course, requires that the specific legal argument or ground upon which the objection is based must be presented to the trial court. Occhicone v. State, 570 So. 2d 902, 905-06 (Fla. 1990), cert. denied, 500 U.S. 938 (1991).

Here, Baggett argued in the trial court that the statute was unconstitutional, but he never raised the specific claim he raises now. (R. 20-38, 45-46). This claim was therefore not properly preserved below and should not be considered by this Court.

Even if this claim had been preserved, it should still be rejected as without merit in this case. Baggett did not actually receive a sentence under two statutes. Accordingly, Baggett's claim is based on a purely speculative reading of the statute, and even if he was correct that double sentencing would be unconstitutional, he would be entitled to no relief. His double jeopardy claim should therefore be rejected.

Baggett next contends that the statute is constitutionally infirm because its provisions are vague. He claims that the statute

is vague because it does not define the terms "extenuating circumstances" or "just prosecution." The State submits that these terms are not unconstitutionally vague, using ordinary logic and common sense.

A statute is unconstitutionally vague if it "'either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.'" Bouters v. State, 659 So. 2d 235, 238 (Fla.) (quoting Connally v. General Construction Co., 269 U.S. 385, 391 (1926)), cert. denied, 116 S.Ct. 245 (1995). Moreover, a court must find an allegedly vague statute to be constitutional "if the application of ordinary logic and common understanding would so permit." State v. Hoyt, 609 So. 2d 744, 747 (Fla. 1st DCA 1992).

Applying this analysis here, the terms Baggett attacks are not unconstitutionally vague. The "other extenuating circumstances" condition is clearly a simple catch-all provision, allowing the prosecutor to retain his or her discretion to seek the imposition of these enhanced provisions as the circumstances require, and the use of the term "just prosecution" is sufficiently well understood in criminal cases. There is nothing unconstitutionally vague about this sentencing scheme. See Woods, 24 Fla. L. Wkly. at D833 (rejecting vagueness challenge to PRR statute).

As his next argument, Baggett contends that the statute violates equal protection, making no rational distinction between those who had been sentenced to county jail and those who had been sentenced to prison. Again, this argument was never raised in the trial court and accordingly may not be raised now.

Even if this claim was properly raised here, it should still be rejected as without merit. The Equal Protection Clause allows states to create classifications so long as those classifications are reasonably related to a legitimate state interest. See, e.g., Stall v. State, 570 So. 2d 257, 262 n. 7 (Fla. 1990), cert. denied, 501 U.S. 1250 (1991). The classification at issue here clearly meets this test.

The fact that the statute does not reach every released criminal does not render it irrational. It is clear that Florida's prison system is designed in such a way that more dangerous criminals are housed in the state prison system, while those who are convicted of less serious offenses (those given a sentence of one year or less) are housed in the county jails. Severely punishing those offenders who have already committed crimes serious enough to land them in the state prison certainly bears a reasonable relation to the legislature's purpose of making our society safer. Baggett has failed to demonstrate that this sentencing scheme is irrational.

It goes without saying that recidivism is a severe problem in our society. The solution provided by this statute, albeit severe, is certainly a reasonable one, and well within the prerogative of the legislature. See McKnight, 727 So. 2d at 319 (rejecting due process claim, finding that statute bears rational relationship to legitimate government objective); Woods, 24 Fla. L. Wkly. at D833 (rejecting equal protection claim).

Baggett finally contends that the statute is unconstitutional because it was enacted in violation of the single subject requirement of article III, section 6 of the Florida Constitution. Again, this claim was not presented to the trial court. In any event, it should be rejected as without merit.

Article III, section 6 of the Florida Constitution simply requires that there be a logical or natural connection between the various portions of the legislative enactment. State v. Johnson, 616 So. 2d 1, 4 (Fla. 1993). This requirement is satisfied as long as a "reasonable explanation exists as to why the legislature chose to join [the] subjects within the same legislative act." Id.

In making this determination, "wide latitude" must be given to the legislature, and a court should not strike down a statute on this basis absent a "plain violation" of the constitutional requirement. State v. Lee, 356 So. 2d 276, 282 (Fla. 1978). The act may be as broad as the legislature wishes, as long as there is

some natural or logical connection between the various provisions. Martinez v. Scanlan, 582 So. 2d 1167, 1172 (Fla. 1991).

Here, a reading of the relevant chapter law shows that there is a natural or logical connection between the various sections. The chapter law creates the statute at issue, dealing with punishment of repeat offenders; provides for a warning of the mandatory sentences as inmates are released; provides for mandatory forfeiture of gain-time upon violation of conditional release and upon revocation of probation/community control; gives law enforcement officers the authority to arrest a probationer without a warrant upon probable cause that the person is in violation of his probation; and reenacts certain statutes to incorporate the amendments by reference.

Clearly, the entire chapter deals with a single subject -- sanctions for repeat offenders who are still failing to obey the law. The provisions are not connected solely by the fact that they all deal with the general topic of crime, as argued by Baggett.

This chapter law is similar to other laws where courts have found a reasonable connection between the various provisions -- with the requisite deference to the legislature. See, e.g., Burch v. State, 558 So. 2d 1, 3 (Fla. 1990) (approving Chapter 87-243, where provisions relating to comprehensive criminal regulations, money laundering, and safe neighborhoods were all related to single

subject of controlling crime); Smith v. Department of Insurance, 507 So. 2d 1080, 1084-87 (Fla. 1987) (tort reform and contractual insurance reform provisions could be enacted in same legislation).

The Fourth District Court of Appeal recently addressed the same argument Baggett makes here, concluding that the Act does not violate the single subject rule. Young v. State, 719 So. 2d 1010, 1011-12 (Fla. 4th DCA 1998), rev. denied, 727 So. 2d 915 (Fla. 1999). This Court should follow the well-reasoned decision of the district court in Young, and Baggett's single subject argument should be rejected.

Baggett's final attack on the constitutionality of the statute should be rejected by this Court, and the district court's decision affirming Baggett's sentence as a prison releasee reoffender should be approved.

CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully requests that this Court approve the decision of the district court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Respondent's Brief has been furnished by hand delivery to Dee Ball, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this _____ day of March, 2000.

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