IN THE SUPREME COURT OF FLORIDA

MICHAEL J. HILLYAR

Petitioner,

v. CASE NO. SC00-835

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON THE MERITS

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CERTIFICATE OF FONT AND TYPE SIZE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

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 Hillyar's argument, the statutory scheme does not transfer the judicial function of determining sentence to the state attorneys' offices. The trial court still fulfills its proper role -- deciding whether the defendant is eligible for this sentencing enhancement and imposing the sentence itself.

ARGUMENT

THE PRISON RELEASEE REOFFENDER ACT DOES NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE.

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).

Hillyar contends that the prison releasee reoffender act is unconstitutional, as it violates the separation of powers doctrine. According to Hillyar, 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).

Hillyar'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 Hillyar's argument, this procedure does not mean that the executive has usurped the power of the judiciary. 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).

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 Hillyar's separation of powers argument should be rejected. See also Woods v. State, 740 So. 2d 20 (Fla. 1st DCA) (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).

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 S. C. Van Voorhees, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this _____ day of May, 2000.

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