

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

FILED
THOMAS D. HALL

MAY 03 2000

CLERK SUPREME COURT
BY DJ

EDWARD JESSE MEYERS, :
 :
 Petitioner, :
 :
 vs. :
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 _____ :

Case No. SC00-967

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

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STATEMENT OF TYPE USED

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STATEMENT OF THE CASE AND FACTS

On May 13, 1999, the Petitioner, EDWARD JESSE MEYERS, entered a plea of guilty to the offenses of robbery and obstructing or opposing an officer without violence. At the plea it was noted that the Petitioner's motion to declare section 775.082(8) Florida Statutes (1997), unconstitutional had been denied. The trial court found that the Appellant qualified as a prison release reoffender and as a habitual offender. The trial court sentenced the Appellant to a 15 year sentence as a prison release reoffender and to 15 years **as** a habitual offender with a 10 year minimum mandatory under the habitual violent felony offender statute. The Petitioner was sentenced to credit for time served on the misdemeanor count.

The Appellant filed his timely notice of appeal on May 25, 1999. On April 19, 2000, the Second District Court of Appeal affirmed Mr. Meyers' sentence. See Meyers v. State, Case No. 2D99-2401 (Fla. 2d DCA April 19, 2000). Citing to Grant v. State, 745 so. 2d 519 (Fla. 2d DCA 1999), the Second District ruled: the PRR statute was constitutional; and (2) that it was not a double jeopardy to sentence a defendant under both the habitual offender statute and the PRR statute.

Mr. Meyers filed a Notice to Invoke Discretionary Jurisdiction in the Second District Court of Appeal on April 20, 2000.

SUMMARY OF THE ARGUMENT

This Court has jurisdiction to review Mr. Meyers' case as the Second District in citing to Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999) expressly construed the constitutionality of a statute and declared it valid. This Court has already accepted review of similar decision holding the PRR Act valid which were issued from other district courts of appeal.

ARGUMENT

ISSUE

THE DISTRICT COURT'S DECISION EXPRESSLY DECLARES A STATE STATUTE VALID, GIVING THIS COURT JURISDICTION PURSUANT TO FLA. R. APP. P. 9.030(a)(2)(a)(i).

In Meyers v. State, Case No. 2D99-2401 (Fla. 2d DCA April 19, 2000), the Second District Court of Appeal affirmed the lower court and cited to Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999), a case currently pending review in the Florida Supreme Court (A1). Since the opinion issued by the Second District in ~~Grant~~ expressly declares section 775.082(8), Florida Statutes (1997) (the Prison Releasee Reoffender Act) to be valid, and Grant is currently pending review in this Court, this Court can exercise its discretion to review the instant case. See Jollie v. State, 405 So. 2d 418 (Fla. 1981).

The Grant opinion discusses constitutional challenges grounded upon the single subject requirement, separation of powers, cruel and unusual punishment, vagueness, due process, equal protection, and ex post facto.

This Court should exercise its discretion to review Mr. Meyers' case for the same reasons that it granted review in previous decisions from other district courts of appeal which declared the Prison Releasee Reoffender Act valid.

CONCLUSION

Based upon the foregoing argument, reasoning and authorities, Edward J. Meyers petitions this Court to grant review of the Second District's decision in Meyers v. State, Case No. 2D99-2401 (Fla. 2d DCA April 19, 2000).

APPENDIX

PAGE NO.

A1-A2

1. Second District Court of Appeal's opinion dated March 24, 2000.

PD

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

EDWARD JESSE MEYERS, a/k/a)
WILLIAM A, MEYERS)
)
Appellant,)
)
v.)
)
STATE OF FLORIDA,)
)
Appellee.)

Case No. 2099-2401

Opinion **filed** April 19, 2000.

Appeal from the Circuit Court for
Pinellas County; Richard A. **Luce**,
Judge.

James Marion **Moorman**, Public
Defender, and Timothy J. **Ferreri**,
Assistant Public Defender, **Bartow**, for
Appellant.

Robert A. **Butterworth**, Attorney
General, Tallahassee, and Wendy
Buffington, Assistant Attorney General,
Tampa, for Appellee.

PER CURIAM.

Received By

APR 19 2000

Appellate Division
Public Defenders Office

AI

Edward Meyers appeals his sentence as a prison releasee reoffender and a habitual felony offender for a robbery he committed on August 6, 1998. Mr. Meyers asserts that section **775.082(8)**, Florida Statutes (1997), the Prison **Releasee** Punishment Reoffender Act, is unconstitutional and that his sentence as both a habitual offender and a prison releasee violates the prohibition against double jeopardy. These claims were considered and rejected by this court in Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999). We therefore **affirm** Mr. Meyers' sentence.

We note that Mr. Meyers sought out this sentence, which results in fifteen years' imprisonment. The trial court imposed the sentence over the State's objection. In fact, the State sought to classify Meyers as a violent career criminal, which would have resulted in a thirty-year minimum mandatory sentence. **See § 775.084**, Fla. Stat. (1997). The sentence imposed is within the statutory maximum. **See § 775.082(3)(c)**, Fla. Stat. (1997). As a result, Mr. Meyers may have waived any double jeopardy claim.

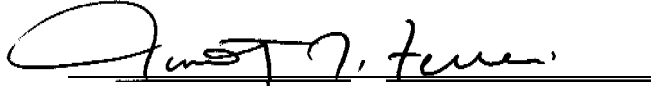
Affirmed.

ALTENBERND, A.C.J., and **NORTHCUTT**, J., and **DANAHY**, PAUL W., (SENIOR)
JUDGE, Concur.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Wendy Buffington, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this 2ND day of May, 2000.

Respectfully submitted,



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