IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC01-2620

STATE OF FLORIDA,

Appellant,

vs.

LEON ROBINSON,

Respondent.

APPELLANT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Leon Robinson was the defendant below and will be referred to as "Appellee." The State will be referred to as "Appellant." The symbol "T" will denote the transcript. The symbol "SR" will denote the Supplemental Record on Appeal. The symbol "SR" will denote the Second Supplemental Record on Appeal. The symbol "ST" will denote the Supplemental Transcript on Appeal. All emphasis is added unless otherwise noted.

STATEMENT OF THE CASE AND FACTS

Appellee, Leon Robinson, was convicted of the offenses of carjacking and kidnaping (R 8-9, ST Vol. 3 516, SR 24-25). He received two life sentences (SR 34, 37).

The evidence at trial showed that the victim's mother stopped at an automobile parts store to purchase power steering fluid (ST Vol. 2 320-23, 346, 352). She left her daughter in a car seat while in the store (ST Vol. 2 322, 392-93). Appellee and another man, Prentice, aware of the child's presence, decided to take the vehicle (ST Vol. 2 393). Appellee claimed that he and his accomplice intended to leave the victim at a police station after stealing the car (ST Vol. 2 394).

Thereafter, Prentice knocked the victim's mother down, Appellee closed the car's hood, and the two men drove away (ST Vol. 2 322-4, 394). The child was found on a sidewalk forty-five minutes later, several miles from where she was kidnaped (ST Vol. 2 305-6, 331, 347, Vol. 3 415). Appellee was not the nineteenth month old victim's father, nor did he have any other familial relationship with her (ST Vol. 2 325, 394).

The Fourth District affirmed the defendant's direct appeal of his conviction. See Robinson v. State, 757 So. 2d 1267 (Fla. 4th DCA 2000).

The State subsequently filed a notice to declare the defendant a sexual predator, stating that Appellee qualified as a sexual predator as he had been convicted of kidnaping a minor child not his own (R 11, SR 42). See § 775.21(4)(c)5 Fla. Stat. (Supp. 1998). At a hearing on the matter, Appellee maintained that the statute should not apply to him because he did not commit any type of sex act during the kidnaping and carjacking (T 5). The State agreed that there had been no proof that the victim had been sexually exploited during the kidnaping and carjacking (T 4). However, the State maintained that Appellee still fell within the statute as he had kidnaped a child not his own (T 3). The trial court designated Appellee a sexual predator, finding that his crime fell within the terms of the statute (T 6).

The defendant filed a timely notice of appeal (R 14). The Fourth District reversed, finding the statute unconstitutional as applied to Appellee, since there was no evidence of any sexual activity. See Robinson v. State, 26 Fla. L. Weekly D2643 (Fla. 4th DCA Nov. 7, 2001).

The State timely appealed to this Court.

SUMMARY OF THE ARGUMENT

I

Appellee is serving two life sentences. He lacks standing to raise this claim as he has failed to show any distinct and palpable injury resulting from his designation as a sexual predator.

The statute in question satisfies the rational basis test. The Legislature could legitimately conclude that a very high percentage of kidnapings of children by those not the children's parents, are done for the purpose of sexually exploiting the children. The Legislature could also rationally conclude that the difficulty in confirming that an abducted child had been sexually exploited in some way, justified the inclusion of all kidnapers of children not their own.

ARGUMENT

I

THE FOURTH DISTRICT ERRED IN ITS APPLICATION OF THE RATIONAL BASIS TEST TO THE SEXUAL PREDATORS ACT.

Initially, Appellant notes that the Fourth District improperly reversed because Appellee failed to establish standing to challenge the constitutionality of the sexual predator statute. To establish standing, it must be shown that the party suffered injury in fact for which relief is likely to be redressed. See Peregood v. Cosmides, 663 So. 2d 665 (Fla. 5th DCA 1995). The injury must be distinct and palpable. See Warth v. Seldin, 422 U.S. 490, 501 (1975). It may not be abstract, conjectural, or hypothetical. See Allen v. Wright, 468 U.S. 737, 741 (1984).

Appellee claimed below that the sexual predator statute impinged on some unspecified rights and liberties (District Court initial brief p. 10). The statute requires registration and contains reporting requirements for defendants released from incarceration. See generally, § 775.21 (6) and (7) Fla. Stat. (Supp. 1998). Appellee is serving two life sentences. In Florida, "life" means life. See Harris v. State, 674 So. 2d 854, 855 (Fla. 3d DCA 1996).

Appellee's liberty will be severely restricted for the rest of his life. Accordingly, any claim that the sexual predator statute will ever have any real

impact on him is purely conjectural. Therefore, the Fourth District should have rejected this claim for lack of standing or ripeness. Cf. Martin v. State, 205 Ga. App. 200, 422 S.E. 2d 6 (1992)(defendant challenging provision of life sentence that did not provide for parole lacked standing to make the challenge until the time that he claims a right of parole and the statute is asserted against him as a bar). See also Singletary v. State, 322 So. 2d 551, 552 (Fla.1975) (recognizing settled principle of constitutional law that courts should not pass upon constitutionality of statutes if case may be effectively disposed of on other grounds).

Assuming arguendo that this Court believes the issue is ripe for review and Appellee has standing, the Fourth District's decision should be reversed on the merits. The District Court properly found that the rational relationship test was the appropriate method to determine the validity of the statute in this case. See Robinson v. State, 26 Fla. L. Weekly D2643 (Fla. 4th DCA Nov. 7, 2001)(finding the rational basis test applicable because the statute is not punitive and because kidnappers are not part of suspect class). However, the Court erred in its application of this test.

It is a fundamental principle of constitutional law that "all doubts as to the validity of a statute are to be resolved in favor of constitutionality where reasonably possible." L.B. v. State, 700 So. 2d 370, 373 (Fla.1997)(quoting Department of

Law Enforcement v. Real Property, 588 So. 2d 957, 961 (Fla. 1991)). Thus, "[a] statute is presumed to be constitutional until shown to be otherwise." State v. Sobieck, 701 So. 2d 96 (Fla. 5th DCA), rev. denied, 717 So. 2d 538 (Fla. 1998). See also Scullock v. State, 377 So. 2d 682 (Fla. 1979).

Under the rational basis test, the court must inquire "only whether it is conceivable that the ... classification bears some rational relationship to a legitimate state purpose." See Florida High School Activities Ass'n, Inc. v. Thomas By and Through Thomas, 434 So. 2d 306, 308 (Fla.1983). The burden is upon the party challenging the statute to show that there is no conceivable factual basis which would rationally support such classification. Id. The Legislature has wide discretion in creating statutory classifications, and there is a presumption in favor of validity. North Ridge Gen. Hosp., Inc. v. City of Oakland Park, 374 So. 2d 461, 464 (Fla.1979).

Furthermore, the Legislature need not actually articulate the purpose or rationale supporting its classification. See Heller v. Doe by Doe, 509 U.S. 312, 319 (1993). Instead, the classification must be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. Id. Moreover, the State has no obligation to produce evidence to sustain the rationality of a statutory classification. Id. A legislative choice is not subject to

courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data. Id.

Additionally, courts are compelled under rational basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational basis review because it is not made with mathematical nicety or because in practice results in some inequality. Id. "The problems of government are practical ones and may justify, if they do not require, rough approximations - - illogical it may be, and unscientific." Metropolis Theatre Co. v. Chicago, 228 U.S. 61, 69-70 (1913). "There is no merit to the claim that a classification which rationally furthers the State's purpose is arbitrary simply because 'the line drawn by a legislature leaves some out that might well have been included,' Village of Belle Terre v. Boraas, 416 U.S. 1, 8, (1974), or that the line drawn includes some who do not merit inclusion. Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 316, 96 S.Ct. 2562, 2568, 49 L.Ed.2d 520 (1976)." State v. C.H., 421 So. 2d 62, 65 (Fla. 4th DCA 1982).

It is important to remember that the sexual predator requirements are neither a sentence nor punishment. See Walker v. State, 718 So. 2d 217, 218 (Fla. 4th DCA 1998). It should also be noted that the statute excludes parents who kidnap their children. See § 775.21(4)(c)1.a. Fla. Stat. (Supp. 1998).

Appellee recognized in his brief in the Fourth District that the Legislature's concern that persons kidnap children to sexually exploit them was reasonable and that it was reasonable to conclude that designating persons who kidnap children as sexual predators would protect the public against such occurrences (initial brief in District Court p. 13). The Legislature could legitimately conclude that a very high percentage of kidnapings of children by those not the children's parents, are done for the purpose of sexually exploiting the children. The Legislature could also rationally conclude that the difficulty in confirming that an abducted child had been sexually exploited in some way, justified the inclusion of all kidnapers of children not their own. Because of the child's trauma, fear, or simply because of the child's age (the victim in this case was a nineteenth month old girl), the child may be unwilling or unable to communicate the fact that he or she has been sexually exploited. In fact, because of the child's age or the manner of the sexual exploitation, a child may not even be aware of the exploitation. For example, the kidnaper may secretly photograph or observe the child for sexual gratification.

Although the State has no burden and is under no obligation to produce empirical data to support its position, such data exists. See, e.g., Missing, Abducted, Runaway and Thrownaway Children in America, National Incidence Study, v, xv-xvi, 153, 161, 163 (Department of Justice study showing that in 1988

as many as 4,600 children were abducted or detained by non-family members and more than two-thirds were sexually assaulted); Dawn Fisher, Adult Sex Offenders: Who Are They? Why And How Do They Do It?, in SEXUAL OFFENDING AGAINST CHILDREN , 7 (Tony Moron et al. eds., 1994) (citing study that estimates ninety percent of sex crimes against children remain unreported); Jessie Anderson et al., Prevalence of Childhood Sexual Abuse Experiences in a Community Sample of Women, 32 J. Am. Acad. of Child & Adolescent Psychiatry 911, 915 (1993) (reporting that sixty-four percent of women responding to a survey who were sexually abused as children did not disclose the abuse for at least one year and that twenty-eight percent had never disclosed the abuse prior to taking the survey); John E.B. Myers, Legal Issues in Child Abuse and Neglect Practice, 8 (Jon R. Conte ed., 2d ed. 1998) (the secretive nature of child sexual abuse masks its prevalence) and Judy Yun, Note, A Comprehensive Approach to Child Hearsay Statements in Sex Abuse Cases, 83 Colum.L.Rev. 1745, 1745 (1983)(Detecting child sexual abuse is problematic because of the lack of witnesses, the difficulty of obtaining corroborative physical evidence, and the typical reluctance or inability of the victim to testify against the defendant).

In People v. Fuller, 324 Ill. App. 3d 728, 756 N.E. 2d 255, 258 Ill. Dec. 273 (1st. Dist. 2001), the defendant kidnaped two children, but they escaped shortly

after the abduction. The Illinois statute in question required those convicted of kidnaping or aggravated kidnaping of a child not their own, to register as a sex offender. The defendant argued that the statute was unconstitutionally overinclusive because his crime had no sexual element. The Court, applying a rational basis analysis, rejected the defendant's claim. While the Court noted that there was some evidence of a sexual motive for the defendant's actions, that did not seem to be the determinative factor in its finding that the statute satisfied the rational relationship test:

> Defendant alleges the absence of a rational connection between the offense of aggravated kidnaping and the purpose of the Registration Act. In essence, defendant argues nothing more than it is unfair for him to suffer the stigmatization of being labeled a sex offender when his crime was not sexually motivated. While the term "sex offender" may carry a stigma, **there is little doubt that the offense of kidnaping a person under 18 is intended to trigger the Registration Act. 730 ILCS 150/2(B)(1.5) (West 2000). While defendant did not commit what is generally labeled a sexually oriented offense, such as rape, sexual assault or pimping, the law clearly identifies aggravated kidnaping of a person under 18 as a "sex offense." 730 ILCS 150/2(B)(1.5) (West 2000). <u>It is particularly disingenuous for the defendant to argue that there is no rational relationship between the kidnaping of a child and the purpose of protecting children from the increasing</u>**

> **incidence of sexual assault and sexual abuse. The most obvious connection between the offenses listed in section 2(B)(1.5) and the purpose of the Registration Act is that kidnaping or unlawful restraint of a minor is often a precursor offense to juvenile pimping or exploitation of a child, which are, indisputably, within the purview of the Registration Act's purpose.** In defendant's own case, the arresting police officer testified that when the officer asked defendant what he planned to do with the children, defendant "stated he was going to find a hotel room and ask the girl if she had any friends." This statement, eerily suggestive of the nature of defendant's plans for the children, in conjunction with defendant's conduct in failing to release the children themselves support the logical nexus between the act of kidnaping a child and the very real possibility of subsequent sexual exploitation of that child.
>
> Defendant has not met his burden of rebutting the Registration Act's presumed validity. Accordingly, we hold that section 2(B)(1.5) of the Registration Act does not violate constitutional due process guarantees.

756 N.E. 2d at 259-60.

Criminals who kidnap children not their own is not a protected class. The Florida Legislature could have rationally concluded that the challenged provision would protect against child sexual abuse and that the difficulties of individual determinations justified the inclusion of convicted felons who kidnap children not their own. Cf. Gallie v. Wainwright, 362 So. 2d 936, 944 (Fla. 1978)(Legislature could reasonably conclude that expense and other difficulties of individual determinations justified prophylactic rule denying post-conviction bail to all persons

convicted of a felony, and who had previously been convicted of a felony); Marchese v. State of California, 545 F. 2d 645 (9th Cir. 1976)(statute prohibiting nonviolent as well as violent felons from possessing handguns was not unconstitutionally overinclusive).

CONCLUSION

Based on the preceding argument and authorities, this Court should reverse.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I certify that a true copy of this document has been sent by courier to: Ian Seldin, Criminal Justice Building\6th Floor, 421 Third Street, W. Palm Beach, FL 33401, this ___ January, 2002.

_____

Of Counsel

CERTIFICATE OF FONT

In accordance with the applicable Florida Supreme Court Administrative Order, counsel certifies that this brief had been prepared with 12 point Courier New type, a font that is not spaced proportionately.

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Of Counsel