IN THE SUPREME COURT OF FLORIDA

LEROY B. REEVES,

Petitioner,

v. Case No. SC06-504

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

MERITS BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The State generally accepts Reeves's statement of the case and facts but restates and adds the following:

Around 5:15 a.m. on January 29, 1999, Officer Neff was dispatched to a Chevron gasoline station after the burglary alarm had sounded. (Supp. Vol. V, T. 23-25). She approached the station and immediately noticed that the storefront glass had been broken, and two vehicles were parked out front. (Supp. Vol. V, T. 25). While Officer Neff observed one man run out of the store, dropping a box, she also observed two other men, one of which was Reeves, behind a Cadillac with the trunk open. (Supp. Vol. V, T. 25-26).

Upon seeing Officer Neff, Reeves fled on foot, running around the Chevron building. He then came back out front and entered the other vehicle, a small green Ford. (Supp. Vol. V, T. 28-29). Officer Neff followed the Ford for a short distance before Reeves fled the still moving vehicle. Officer Neff struggled and fought with Reeves, but he was able to wiggle free and flee into the woods. (Supp. Vol. V, T. 29-34). Officer Neff returned to the Chevron station, set up a perimeter, and noticed that the trunk of the Cadillac, where she had seen Reeves standing prior to his flight, was full of cartons of cigarettes. (Supp. Vol. V, T. 34-36).

Reeves was apprehended after being detected by a canine unit about two hours later. He was brought to the Chevron station where

Officer Neff identified him. Reeves was wearing a shirt but he had been shirtless when Officer Neff had pursued him earlier. (Supp. Vol. V, T. 36-38).

SUMMARY OF ARGUMENT

This Court should adopt the rationale of Reeves v. State, 920 So.2d 724 (Fla. 5th DCA 2006), and find that a trial court can lawfully impose a PRR sentence and a non-PRR criminal punishment code sentence consecutively for offenses that arise out of the same criminal episode. Because a PRR sentence is a statutory maximum sentence, not a sentence enhancement such as a habitual offender sentence, this Court need not follow its prior decisions in Hale v. State, 630 So.2d 521 (Fla. 1993), cert. denied, 513 U.S. 909 (1994), and Daniels v. State, 595 So.2d 952 (Fla. 1992). Also, Reeves could have lawfully received four consecutive sentences without the PRR designation, even if his four convictions arose out of the same criminal episode. Nonetheless, the facts support the conclusion of both the trial court and the district court that Reeves engaged in two separate episodes as the crimes occurred in different locations and had different victims.

ARGUMENT

REEVES WAS PROPERLY SENTENCED AS A PRISON RELEASEE REOFFENDER FOLLOWED BY CONSECUTIVE TERMS FOR HIS REMAINING OFFENSES.

At issue before this Court is whether a trial court may impose a non-prison releasee reoffender sentence consecutive to a prison releasee reoffender ("PRR") sentence. Reeves received a twenty year sentence for four third degree felonies: a five year sentence as a PRR for his resisting a law enforcement officer with violence conviction, followed by three consecutive terms of five years imprisonment for his convictions for burglary, grand theft, and battery on a law enforcement officer. Reeves filed a motion to correct pursuant to Florida Rule of Criminal Procedure 3.800(a), arguing the consecutive sentences were illegal because they arose from a single criminal episode. Reeves v. State, 920 So.2d 724, 725 (Fla. 5th DCA 2006).

Affirming the denial of his motion, the Fifth District Court of Appeal held that a PRR sentence, followed by a consecutive criminal punishment code sentence not otherwise enhanced beyond the statutory maximum, is not an illegal sentence, even when the crimes arise from the same criminal episode.[1] Id. at 726. In reaching this conclusion, the court certified conflict with Rodriguez v.

[1] The court also concluded that Reeves did engage in two criminal episodes, with the burglary and grand theft being one incident, and the resisting arrest and battery on a law enforcement officer being a separate criminal episode. Id. at 725. The court then added that this conclusion did not change the result. Id.

State, 883 So.2d 908 (Fla. 2d DCA 2004). Reeves, 920 So.2d at 726. In Rodriguez, the Second District Court of Appeal held that this type of consecutive sentences, which arose from the same criminal episode and together exceeded the maximum incarceration period for any individual count under the PRR Act, was illegal.[2] Rodriguez, 883 So.2d at 909-910.

The State contends that this Court should adopt the rationale of Reeves, and reject Rodriguez, as the imposition of a PRR sentence followed by consecutive non-PRR sentences, which together do not exceed the statutory maximum, is legal under the Florida Statutes and consistent with the intent of the PRR Act.

The PRR Act is codified at section 775.082(9)(a)1 of the Florida Statutes (1998 Supp.). The PRR Act provides that a person who commits certain enumerated felonies under that statute within three years of being released from a state correctional facility is a prison releasee reoffender. See section 775.082(9)(a)1, Fla. Stat. (1998 Supp.). The prosecutor may seek to have a defendant sentenced as a PRR and upon a showing by a preponderance of the evidence that the defendant is eligible, the trial court must impose the statutory maximum sentence for the enumerated felony. Section 775.082(9)(a)2, Fla. Stat. (1998 Supp.). That person will

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[2] Interestingly, without the PRR designation, Rodriguez could have been sentenced to twenty years for his four third degree felony convictions. With the PRR designation, the district court concluded that he could receive only a five year sentence. Rodriguez, 883 So.2d at 909-910.

serve 100% of his or her sentence and not be eligible for parole, control release, or any form of early release. Section 775.082(9)(b), Fla. Stat. (1998 Supp.). The purpose of this section is to provide uniform punishment for those crimes made punishable under this section. Section 775.082(10), Fla. Stat. (1998 Supp.).

This Court has stated that the purpose of this statute is clear and, unlike the habitual offender and habitual felony offender statutes, "where invoked, [the PRR Act] is intended to operate as a mandatory minimum statute." See State v. Cotton, 769 So.2d 345, 350 (Fla. 2000). The PRR Act does not increase the maximum statutory penalty; instead, the discretion of the sentencing court in selecting a penalty within the statutory range is limited. McGregor v. State, 789 So.2d 976, 978 (Fla. 2001). See also Kijewski v. State, 773 So.2d 124, 125 (Fla. 4th DCA 2000), rev. denied, 790 So.2d 1105 (Fla. 2001), cert. denied, 536 U.S. 961 (2002)(PRR Act did not increase the statutory maximum penalty).

Reeves's claim that he could not receive consecutive sentences hinges on two points. He argues first that he engaged in one criminal episode[3] and as a result, he could only be sentenced to four concurrent terms because a PRR sentence is an enhancement sentence. Thus, according to Reeves, under this Court's decisions

[3] Respondent contends that the district court did properly find that Reeves engaged in two criminal episodes. See discussion infra, pp. 14-17.

in Hale v. State, 630 So.2d 521 (Fla. 1993), cert. denied, 513 U.S. 909 (1994) and Daniels v. State, 595 So.2d 952 (Fla. 1992), consecutive sentences are illegal.

The only case which supports Reeves's position is Rodriguez. The flaw in both Reeves's argument and in Rodriguez rests on the premise that a PRR sentence constitutes an enhanced sentence, like that of a habitual offender sentence. Based upon that premise, Reeves, relying upon Rodriguez, looks to Hale and Daniels as the bases for the conclusion that a PRR sentence cannot be imposed with a consecutive criminal punishment code sentence.

A plain reading of Daniels and Hale[4], both of which came out well before the PRR Act, lends support for the conclusion that the consecutive terms can be imposed in this case because a PRR sentence is not an enhanced sentence, but a maximum minimum mandatory sentence. Thus, Rodriguez erred in expanding Daniels and Hale to apply in PRR cases where the aggregate consecutive sentences imposed do not exceed the statutory maximum.[5]

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[4]Daniels and Hale have been applied to prohibit consecutive PRR sentences arising from the same criminal episode by the First, Second, Third, Fourth, and Fifth District Courts of Appeal. See e.g., Robinson v. State, 829 So.2d 984 (Fla. 1st DCA 2002); Smith v. State, 824 So.2d 263 (Fla. 2d DCA 2002), Gonzalez v. State, 876 So.2d 658 (Fla. 3d DCA 2004), Philmore v. State, 760 So.2d 239 (Fla. 4th DCA 2000); and Williams v. State, 804 So.2d 572 (Fla. 5th DCA), cause dismissed, 829 So.2d 921 (Fla. 2002). Consecutive PRR sentences were not imposed here.

[5] Rodriguez followed Kiedrowski v. State, 876 So.2d 692 (Fla. 1st DCA 2004) and Fuller v. State, 867 So.2d 469 (Fla. 5th DCA), rev. dismissed, 887 So.2d 1236 (Fla. 2004), both of which addressed

In Daniels, this Court, analyzing the habitual offender statutes, struck down the imposition of consecutive minimum mandatory sentences. In doing so, this Court noted that by enacting the habitual offender sentencing scheme, the Legislature intended to provide for the incarceration of repeat felony offenders for longer periods of time. Daniels, 595 So.2d at 954. This Court continued, "However, this is accomplished by enlargement of the maximum sentence that can be imposed when a defendant is found to be an habitual felon or an habitual violent felon." Id. (emphasis added). Thus, under the habitual offender sentencing schemes, the sentences are enlarged. For instance, a habitual felon convicted of a third degree felony can be sentenced to up to ten years imprisonment, an additional five years longer than the statutory maximum for a third degree felony. See section 775.084, Fla. Stat. (1998 Supp.).

In Hale, this Court further explained that the legislative intent of the habitual offender statute is satisfied when the maximum sentence for each offense is increased. Hale, 630 So.2d at

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the legality of the imposition of a consecutive sentence following the imposition of a habitual offender sentence. Kiedrowski and Fuller applied and properly followed Hale. However, neither case addressed the propriety of a consecutive sentence imposed with a PRR sentence. Rodriguez fails to distinguish a PRR sentence from a habitual offender sentence, which the district court did below here. Compare Reeves, 920 So.2d at 725-726 and Rodriguez, 883 So.2d at 909-910. An analysis of the differences in these sentencing schemes proves that Rodriguez is legally incorrect and should be disapproved.

524. Thus, when the maximum sentence is enlarged or enhanced under the habitual offender sentencing statute, nothing in that statute permits a further increase by ordering the sentences to run consecutively. Id.

The crux of both Daniels and Hale is that the habitual offender sentencing statute did not create a minimum mandatary sentence, it enlarged that maximum sentence beyond the statutory maximum for a qualifying offense. Thus, the habitual offender sentence differs from "statutory sentences in which the legislature had included a minimum mandatory sentence, such as the sentences for capital crimes, from sentences in which there is no minimum mandatory penalty although one may be provided as an enhancement through the habitual violent offender statute." Id. (citing Daniels, 595 So.2d at 954).

In other words, the "whole point in Hale is that once the habitual offender sentencing scheme is utilized to enhance a sentence beyond the statutory maximum on one or more counts arising from a single criminal episode, consecutive sentencing may not be used to further lengthen the overall sentence." Reeves, 920 So.2d at 726 (quoting Fuller, 867 So.2d at 570). Thus, Hale and Daniels address an entirely different sentencing scheme. See id. ("The rule established in Hale and Daniels applies to sentences that have been enhanced beyond the statutory maximum. A PRR sentence is not enhanced beyond the statutory maximum. Consequently, we conclude

that the rule established in Hale and Daniels has no application here")(emphasis in original).

To that end, as the district court noted below, a PRR sentence is not enhanced beyond the statutory maximum. Rather, the PRR statute establishes that the only lawful sentence for a PRR offender is the statutory maximum, which must be served in its entirety. Reeves, 920 So.2d at 726. Thus, a PRR sentence is properly viewed as a minimum mandatory sentence, which establishes a sentencing floor. Powell v. State, 881 So.2d 1180, 1182 (Fla. 5th DCA 2004).

Outside the habitual offender context, this Court has similarly upheld the imposition of consecutive minimum mandatory sentences. See State v. Boatwright, 559 So.2d 210, 211-213 (Fla. 1990)(trial court can impose consecutive minimum mandatory sentences for two crimes of sexual battery committed during a single criminal episode as the minimum mandatory term was statutorily required); State v. Enmund, 476 So.2d 165, 168 (Fla. 1985)(minimum mandatory sentence for capital felony to be served before eligibility for parole may be imposed either concurrently or consecutively in the discretion of the trial court). Compare Boler v. State, 678 So.2d 319, 322-323 (Fla. 1996)(a minimum mandatory sentence contained in an enhancement statute and a statutorily required minimum mandatory sentence cannot be imposed consecutively). See also Talley v. State, 877 So.2d 840, 841-842

(Fla. 4th DCA 2004)(statute prescribing penalty for certain offenses against law enforcement officers included minimum mandatory term and could be imposed consecutively). In all, the holdings of Reeves and Powell are actually consistent with, not contrary to, Hale and Daniels. Cf. Kelly v. State, 924 So.2d 69, 70-71 (Fla. 4th DCA 2006)(under the Daniels/Hale analysis, trial court could impose consecutive sentences for conspiracy and trafficking arising from same criminal episode as statute provided for minimum mandatory term and was not an enhancement statute).

Reeves's argument that he could be sentenced to only concurrent terms of five years for all four offenses because he was a PRR defies logic. Without the PRR finding, Reeves cannot dispute that he could have been sentenced to the statutory maximum of five years for all four convictions to run consecutively for a total twenty year sentence, even if said offenses were a part of the same criminal episode. See section 921.16, Fla. Stat. (1997). Accordingly, even if Reeves were correct in his assertion that his convictions arose from the same criminal episode, consecutive sentences can be imposed as the district court held below. Reeves, 920 So.2d at 725.

Section 775.082(9)(d)1 specifically states, "It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law . . ." The intent of the Legislature to provide

a minimum mandatory term of imprisonment pursuant to the PRR Act and to allow for the imposition of the greatest sentence authorized by law is clear. Grant v. State, 770 So.2d 655, 659 (Fla. 2000). Failure to impose the minimum mandatory and give a qualifying defendant the greatest punishment defeats the intent of the PRR Act, resulting in a reversible error. Id. (citations omitted).

Under Reeves's argument, he should only receive a five year prison term because he was sentenced as a PRR, when he could have been sentenced to twenty years without that designation. Correspondingly then if Reeves had been convicted of four first degree felonies subjecting him to a maximum sentence of 120 years because he was a PRR, he could only be sentenced to thirty years. This construction is flatly contrary to the stated intent of the Legislature that such offenders should be punished to the fullest extent of the law, and should be rejected. See e.g., Ellis v. State, 622 So.2d 991, 1001 (Fla. 1993)(for a court to hold otherwise would make the obvious mandate of the legislature subservient to the discretion of the court) and City of Tampa v. Thatcher Glass Corp., 445 So.2d 578, 579 (Fla. 1984)(the cardinal rule of statutory construction is that a statute should be construed to give effect to the intention the legislature expressed in the statute).

Without the PRR finding, Reeves could have received the same sentence, a sentence that did not exceed the statutory maximum, and

was not illegal. Reeves, 920 So.2d at 727. Also, with the PRR mandatory minimum sentence followed by the consecutive criminal punishment code sentences, Reeves would still be entitled to gain time once the PRR sentence has been served.[6] See Powell, 881 So.2d at 1182 (to preserve entitlement to any possible early release that may apply to non-PRR sentence, the defendant must be allowed to serve the PRR sentence first). In all, the result is that Reeves will not serve a sentence any longer than authorized by law and that sentence fulfills the intent of the Legislature that qualifying offenders be punished to the "'fullest extent of the law,' including the imposition of a mandatory minimum sentence." Grant, 770 So.2d at 659 (holding that defendant can be sentenced to mandatory minimum PRR sentence concurrent with a longer habitual offender sentence).

This conclusion does not change, as the district court determined below, with the determination that the four offenses Reeves committed were a part of two criminal episodes or one criminal episode. See section 921.16, Fla. Stat. (1997). Accordingly, even if this were the same criminal episode, consecutive sentences can be imposed as the district court held below. Reeves, 920 So.2d at 725.

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[6] Following Powell, the district court remanded the matter so that the sentencing documents reflected that Reeves was to serve the PRR sentence first. Reeves, 920 So.2d at 725-727 (citing Powell, 881 So.2d at 1182).

If this Court were to disagree with Reeves to the extent that a non-PRR sentence cannot be imposed consecutively to a PRR sentence, because Reeves engaged in two criminal episodes, he could still be sentenced to fifteen years imprisonment. See Initial Br. on Merits at 21-22. Reeves could be sentenced to five years as a PRR for his resisting an officer with violence conviction along with a concurrent term of five years for battery on a law enforcement officer followed by two consecutive terms of five years for his burglary and grand theft convictions. Without the PRR designation, Reeves could receive a twenty year sentence.

Yet, Reeves maintains that he engaged in a single criminal episode.[7] The district court determined that Reeves engaged in two separate criminal episodes and the evidence presented at trial supports that conclusion. Reeves, 920 So.2d at 925. A trial court's decision concerning whether offenses were committed during a single criminal episode will be upheld if supported by competent, substantial evidence. Turner v. State, 901 So.2d 233, 236 (Fla. 5th DCA 2005). In order to determine whether offenses occurred during a single criminal episode, courts look to whether there are multiple victims, whether the offenses occurred in multiple locations, and whether there has been a 'temporal break' between offenses. State v. Paul, 31 Fla. L. Weekly S396, S398 (Fla. June 22, 2006)(quotation omitted); Turner, 901 So.2d at 236.

[7] Reeves raises this claim in the first point of his brief.

Around 5:15 a.m. on January 29, 1999, Officer Neff was dispatched to a Chevron gasoline station after the burglary alarm had sounded. (Supp. Vol. V, T. 23-25). She approached the station and immediately noticed that the storefront glass had been broken, and two vehicles were parked out front. (Supp. Vol. V, T. 25). While Officer Neff observed one man run out of the store, dropping a box, she also observed two other men, one of which was Reeves, behind a Cadillac with the trunk open. (Supp. Vol. V, T. 25-26). Upon seeing Officer Neff, Reeves fled on foot, running around the Chevron building. He then came back out front and entered the other vehicle, a small green Ford. (Supp. Vol. V, T. 28-29). Officer Neff followed the Ford for a short distance before Reeves fled the still moving vehicle. Officer Neff struggled and fought with Reeves, but he was able to wiggle free and flee into the woods. (Supp. Vol. V, T. 29-34). Officer Neff returned to the Chevron station, set up a perimeter, and noticed that the trunk of the Cadillac, where she had seen Reeves standing prior to his flight, was full of cartons of cigarettes. (Supp. Vol. V, T. 34-36). Reeves was apprehended after he being detected by a canine unit about two hours later. He was brought to the Chevron station where Officer Neff identified him. She noted that when he was brought to her, Reeves was wearing a shirt when he had been shirtless when she had pursued him earlier. (Supp. Vol. V, T. 36-38).

The facts demonstrate that the burglary and grand theft had been completed when Officer Neff had arrived at the gas station, as one suspect, not Reeves, was seen exiting the store, and the cigarettes which made up the grand theft, were already in the trunk of the car. (Supp. Vol. V, T. 36). Reeves was identified by Officer Neff as the suspect standing at the open trunk of the Cadillac filled with the stolen cigarettes right after Officer Neff arrived at the scene.

The record shows that Reeves had left the scene of the burglary and grand theft when he was first observed by Officer Neff. He then ran off, came back to a vehicle and drove off. Thus, away from the scene of the burglary and grand theft, Reeves abandoned his car and fled on foot. Officer Neff caught up with him and a struggle ensued which resulted in the additional charges of battery on a law enforcement officer and resisting with violence.

The evidence showed that Reeves committed these offenses in separate locations against separate victims. Accordingly, the finding that Reeves' commission of battery on a law enforcement officer and resisting an officer with violence was separate and distinct from the earlier criminal episode of burglary and grand theft is supported by substantial competent evidence. See Turner, 901 So.2d at 236-247 (robbery separate from resisting an officer with violence as offenses were not part of the same criminal

episode, as crimes occurred at two separate locations with separate victims, and defendant successfully escaped from scene of robbery, changed his clothes, and hid money in his vehicle); Jenkins v. State, 884 So.2d 1014, 1016 (Fla. 1st DCA 2004), rev. denied, 898 So.2d 937 (Fla. 2005)(defendant's act of fleeing or attempting to elude two officers who were in their patrol cars occurred in a different location and at different time than earlier conduct toward an officer on bicycle patrol, warranting consecutive sentences); Victor v. State, 774 So. 2d 722 (Fla. 3d DCA 2000), rev. denied, 819 So.2d 141 (Fla. 2002)(holding two separate offenses occurred because they were separated by time and place); and Sprow v. State, 639 So. 2d 992, 993 (Fla. 3d DCA 1994) (burglaries, which occurred at different times, different places, and involved different victims, did not arise out of a single criminal episode).

In all, Respondent urges this Court to adopt Reeves and declare that the imposition of a criminal punishment code sentence consecutive to a PRR sentence, the aggregate of which does not exceed the statutory maximum, constitutes a legal sentence.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Court affirm the decision of Reeves v. State, 920 So.2d 724 (Fla. 5th DCA 2006) in all respects.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing merits brief has been furnished by delivery to Assistant Public Defender Susan A. Fagan, counsel for Reeves, this _____ day of September, 2006.

CERTIFICATE OF COMPLIANCE

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

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