IN THE SUPREME COURT OF FLORIDA

LEROY B. REEVES,

Petitioner,

vs. FSC CASE NO. 06-504

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON THE MERITS

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0845566
444 Seabreeze Boulevard, Suite 210
Daytona Beach, FL 32118
(386) 252-3367

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

LEROY B. REEVES,

Petitioner,

vs. FSC CASE NO. 06-504
FIFTH DCA NO. 5D-04-2295

STATE OF FLORIDA,

Respondent.
_____/

STATEMENT OF THE CASE

The State originally charged the Petitioner, Leroy Reeves, in an information filed on February 17, 1999, with burglary of a structure, grand theft, resisting a law enforcement officer with violence, and battery on a law enforcement officer. (SR[1] 58-60; Vol. 2) After proceeding to a jury trial, and being found guilty of each of the aforementioned offenses, the Petitioner was sentenced by Circuit Court Judge Mark J. Hill, to consecutive five year incarceration terms for each of the aforementioned offenses on April 9, 2001. (SR 65-79; Vol. 1) Specifically, the trial court sentenced the Petitioner for the resisting a law enforcement officer with violence offense as a prison releasee reoffender. (PRR) (SR 63-64; Vol. 1)

The Petitioner filed in the trial court a pro se motion to correct his illegal sentence on April 2, 2004. (R 1-4; Vol. I) Upon a preliminary hearing being

scheduled by Circuit Court Judge T. Michael Johnson on June 17, 2004, the Public Defender was appointed and represented the Petitioner during the subsequent June 30, 2004, hearing on the Appellant's motion to correct an illegal sentence held before Circuit Court Judge Mark J. Hill. (R 13, 31-52; Vol. I) At the conclusion of the June 30, 2004, hearing, Judge Hill denied the Petitioner's motion to correct an illegal sentence, specifically finding that the instant charged burglary and grand theft offenses were completed prior to the Petitioner's commission of the additional charged offenses of resisting a law enforcement officer with violence and battery upon a law enforcement officer. (R 23, 50; Vol. I)

Appellant timely filed a notice of appeal on July 1, 2004. (R 14; Vol. I) The Office of the Public Defender was appointed to represent the Petitioner in this appeal on July 6, 2004. (R 21-22; Vol. I)

The Petitioner filed, through undersigned appellate counsel, a motion to correct sentencing error on December 5, 2004. (SR 82-116; Vol. 3) The trial court held a hearing on the Petitioner's motion to correct sentencing error on January 25, 2005. (SR 126-130; Vol. 4) At the conclusion of the hearing, the trial court denied the Petitioner's motion to correct sentencing error. (SR 117-120; Vol. 3; SR 129-130; Vol. 4)

---

[1] SR = Supplemental record.

On appeal, the Petitioner challenged the trial court's determination that two separate criminal episodes occurred and the four consecutive five year incarceration terms. The Fifth District appellate Court issued a decision in ***Reeves v. State***, 920 So.2d 724 (Fla. 5th DCA 2006), which affirmed each the Petitioner's sentences and held that there were two separate criminal episodes, the first being when the burglary and grand theft offenses occurred together, followed by the second being when the resisting a law enforcement officer with violence and a battery on a law enforcement officer offenses were committed together. The Fifth District, however, acknowledged that its decision conflicts with the holding in the decision of the Second District Appellate Court in ***Rodriguez v. State***, 883 So.2d 908 (Fla. 2d DCA 2004), ***Rodriguez*** held that under principles of double jeopardy, a defendant may not be sentenced to consecutive incarceration terms as a prison releasee reoffender (PRR) and under the criminal punishment code (CPC) for multiple offenses which occur during a single criminal episode.

The Petitioner filed a notice to invoke the discretionary jurisdiction of this Court on March 13, 2006. This Court accepted jurisdiction in this case in an order dated July 12, 2006.

STATEMENT OF THE FACTS

Officer Denys Neff testified that on the early morning of January 29, 1999, she responded to an alarm going off at a Chevron gas station and noticed, upon her arrival at the store, two vehicles, a Cadillac and a Ford, parked in front of the store. (T[2] 23-25; Vol. V) Officer Neff further testified that she then observed a broken window and a male individual bending underneath the bar across the broken window with a box in his hand. (T 25; Vol. V) This male individual, once he became aware of Officer Neff, dropped the box and ran towards the back of the two vehicles. (T 25-26; Vol. V)

Officer Neff next testified that she saw two other male individuals appear from behind the Cadillac vehicle that had the trunk opened. (T 26-27; Vol. V) These two male individuals, according to Officer Neff, then ran towards Tabbins Street and across the front of the Chevron Store, following the first male individual. (T 27-28; Vol. V) It was at this point, according to Officer Neff, that the two male individuals then ran back behind the Chevron Store, followed by one of these male individuals running into the woods and the other getting into the small green Ford vehicle. (T 28-29; Vol. V) As the male individual in the Ford

[2]T= Trial testimony reflected in the trial transcripts for the instant charge offenses which are included in the supplemental record in the instant appellate record as volume V and VI.

vehicle proceeded onto Tabbins Street, it began to slow down as Officer Neff pursued the vehicle. (T 29-30; Vol. V) Officer Neff additionally testified that she eventually observed that male individual exit the driver's side door of the vehicle, while the vehicle continued to roll forward pinning the male individual between the hedge as he ran in front of the vehicle. (T 30; Vol. V) This permitted Officer Neff to observe the individual's head, torso, and his right arm. (T 30; Vol. V) It also prompted Officer Neff to draw her weapon and to tell the male individual to "stay down" as he attempted to wiggle free. (T 30-31; Vol. V)

As the male individual continued to wiggle out from the vehicle, Officer Neff grabbed his shoulder just when he wiggled completely out from the vehicle and grabbed her arm. (T 31; Vol. V) Officer Neff additionally testified that they were standing face-to-face at this point and continued to wrestle as they both eventually broke away from each other. (T 31-32; Vol. V) Officer Neff then again attempted to get a hold of the male individual by grabbing onto his jacket, but the male individual wiggled free from his jacket and took off into a wooded area. (T 31-32; Vol. V) Officer Neff estimated that she was face-to-face with the male individual while they were wrestling for approximately a minute and a half to two minutes. (T 32; Vol. V) Officer Neff also identified the Petitioner, in court, as the individual she wrestled with prior to him fleeing into the nearby woods. (T 32-35; Vol. V)

Officer Neff additionally testified that she immediately returned to the Chevron store to wait for a K-9 unit to arrive at the scene and observed the closed store with the front glass window broken, cigarette cartons sprawled on the floor, and the trunk of the parked Cadillac vehicle packed full with cigarette cartons. (T 34-36; Vol. V) At this point, according to Officer Neff, another male individual is located by Officer Brent Hales. (T 37; Vol. V) The Petitioner was later located by Officer Brent Hales and was taken to the Chevron store where he was identified by Officer Neff as the suspect individual she wrestled with. (T 36-38; Vol. V) The Petitioner was then wearing a pink shirt, which appeared to be too small for him, wet, sweaty, with leaves and dirt in his hair, and with some scratch marks and dirt on the rest of his body. (T 37-39; Vol. V) Finally, Officer Neff testified that, in her mind, there were three suspects she observed at the Chevron store when she first arrived at the scene. (T 45-50; Vol. V)

Officer Brent Hales testified that he responded to the Chevron store and began tracking, with his K-9 unit, from the location where the suspect, who struggled with Officer Neff, dropped a piece of clothing on the ground before going into the woods. (T 59-63; Vol. V) Officer Hales further testified that he and the K-9 unit proceeded into the wooded area, up to a body of water, and then resumed the K-9 search on the other side of the body of water until the K-9 unit

reached an open wooded field. (T 63-65; Vol. V) Officer Hales also observed footprints that resembled work boots in the sand in the area leading away from the water. (T 65-66; Vol. V)

Officer George Whitaker testified that he responded to the Chevron store after the report of a possible burglary at that location, as backup for Officer Neff, by proceeding on Montclair Road. (T 70-71; Vol. V) Officer Whitaker further testified he had heard over the police radio that the burglary suspects had gone into the woods, so he set up a perimeter and first came into contact with a male suspect on Montclair Street, who met the description of one of the burglary suspects. (T 72-74; Vol. V) This individual, according to Officer Whitaker, ran towards the west side of a building, hid in some tall grass, then gave several names upon being arrested, but was ultimately driven by another police officer to the police station and booked as John Doe. (T 74-75; Vol. V)

Officer Whitaker next testified that he remained at the established perimeter to look for the second suspect and proceeded to the corner of Thomas and Main Streets where he observed an individual walking into a store who appeared to have some cuts and scratches on his arm, as well as wet pants, muddy shoes, and grass over his body. (T 75-76; Vol. V) Finally, Officer Whitaker testified that the suspect he detained was the Petitioner who Officer Neff also identified as the

burglary suspect she wrestled with. (T 76-80; Vol. V)

Yan Chen testified that she was the owner of the Chevron store on January 29th, 1999, when she was notified by his security company that the alarm had gone off at the store. (T 89; Vol. V) Yan further testified that she drove to the store and observed that the store's glass door was broken, a vehicle parked in the front of the store, and approximately six cases of cigarettes in the vehicle's back trunk. (T 90; Vol. V) Finally, Yan testified that she estimated the value of the cigarettes taken from the store to be approximately $12,000.00, and that they were. (T 90-91; Vol. V)

Detective Pete Ahern testified that he arrived at the Chevron store after the incident and observed a green Pontiac Aspire and a brown and/or maroon Cadillac parked in the front of the store with the trunk opened, containing two or three boxes filled with cartons of cigarettes, and the front glass door of the store broken with glass all over the ground around the door. (T 93-94; Vol. V) Detective Ahern further testified that the crime scene was photographed and processed for fingerprints, including both vehicles at the scene. (T 94-95; Vol. V) According to Detective Ahern, latent fingerprints were recovered from both vehicles and that it was learned the green Pontiac vehicle was a rental vehicle from Tampa, Florida. (T 95-98; Vol. V) Finally, Detective Ahern testified that the value of the

cigarettes, based on Ms. Chen's prior store inventory, was over $300.00 and that he observed on the top sliding door of an ice cream freezer in the store a distinctive shoe print that appeared to him, similar to the Petitioner's shoes, which he also observed. (T 98-99; Vol. V)

Sheala McBee, the Lake County Sheriff Office Fingerprint Examiner, testified she examined some of the latent fingerprints recovered from the green Pontiac, one of which recovered from above the passenger door handle, belonged to the Petitioner. (T 106-112; Vol. V) Ms. McBee further testified that the Petitioner's fingerprint was matched with a latent fingerprint lifted from the gas tank door of the Cadillac. (T 113; Vol. V) Finally, Ms. McBee testified that the Appellant could not be identified as the individual who left the remaining 19 latent fingerprints recovered from the crime scene. (T 113-115; Vol. V)

SUMMARY OF ARGUMENT

POINT ONE: The Fifth District Appellate Court erroneously held below that two separate criminal episodes occurred during the Petitioner's commission of the four offenses he was convicted of in the instant case. The series of events which encompassed the four charged offenses were tied together by time and location so that each of the four offenses were part of one continuous and interrupted criminal episode. The Fifth District, however, improperly found that the Petitioner's encounter with one law enforcement officer, just as the commission of the grand theft and burglary of the convenience store were still in progress, was a separate event merely because it took place just outside the convenience store. Without any temporal break during the commission of all four offenses, however, they clearly occurred as part of a single criminal episode.

POINT TWO: The Fifth District Appellate Court erroneously held that a sentence imposed under Section 775.082(9), Florida Statutes (1999), as a "prison releasee reoffender" (PRR) was not an "enhanced" sentence, but merely a "minimum mandatory" sentence, which permitted a consecutive sentence to be imposed by the trial court under the Florida Criminal Punishment Code (CPC) for a separately committed criminal offense, even though it occurred during the same single criminal episode. This Court in ***Hale v. State***, 630 So.2d 521 (Fla. 1993), and

Daniels v. State, 595 So.2d 952 (Fla. 1992), has definitely held where the legislature has expressed its intent to increase the punishment under the applicable sentencing statute, the enhancement "is satisfied when the maximum sentence for each offense is increased." Thus, because Petitioner's Prison Releasee (PRR) Reoffender sentence clearly was increased to the maximum sentence imposed by the trial court under Section 775.082(9), to be served "day for day" and, when combined with the Petitioner's Criminal Punishment Code (CPC) consecutively running sentences, as noted in ***Rodriguez v. State,*** 883 So.2d 908, 910 (Fla. 2nd DCA 2004), it exceeds total maximum sentence the Petitioner could have received under the PRR sentencing enhancement statute. The Fifth District, therefore, erroneously held that the Petitioner's total "blended" 20 year "hybrid" sentence of a 5 year Prison Releasee Reoffender (PRR) incarceration sentence, followed by three consecutive 5 year Criminal Punishment Code (CPC) incarceration sentences, is a legal sentence that merely includes a 5 year "minimum" mandatory provision.

ARGUMENT

POINT ONE

THE FIFTH DISTRICT ERRONEOUSLY FOUND TWO SEPARATE CRIMINAL EPISODES OCCURRED AS TO THE PETITIONER'S COMMISSION OF THE FOUR CHARGED OFFENSES.

The State originally charged the Petitioner, Leroy Reeves, in an information filed on February 17, 1999, with burglary of a structure, grand theft, resisting a law enforcement officer with violence, and battery on a law enforcement officer. (SR 58-60; Vol. II) After proceeding to a jury trial and being found guilty of each of the aforementioned offenses, the Petitioner was sentenced by Circuit Court Judge Mark J. Hill, to a twenty year incarceration term by imposing consecutive five year incarceration terms for each of the aforementioned offenses on April 9, 2001. (SR 65-79; Vol. II) Specifically, the trial court sentenced the Petitioner, as to the resisting a law enforcement officer with violence offense, as a prison releasee reoffender. (PRR) (SR 63-64; Vol. II) The remaining offenses were sentenced by the trial court under the Florida Criminal Punishment Code. (CPC) (SR 67-79 Vo. II)

The Petitioner filed a pro se motion to correct his illegal sentence on April 2, 2004. (R 1-4; Vo. I) Upon a preliminary hearing being scheduled by Circuit Court

Judge T. Michael Johnson on June 17, 2004, the Public Defender was appointed and represented the Petitioner during the subsequent June 30, 2004, hearing on the Appellant's motion to correct an illegal sentence before Circuit Court Judge Mark J. Hill. (R 13, 31-52; Vol. 1) At the conclusion of the June 30, 2004, hearing, Judge Hill denied the Petitioner's motion to correct an illegal sentence, specifically finding that the instant charged burglary and grand theft offenses were completed prior to the Petitioner's commission of the additionally charged offenses of resisting a law enforcement officer with violence and battery upon a law enforcement officer.

(R 23, 50; Vo. I)

The Petitioner filed, through undersigned appellate counsel, a motion to correct sentencing error on December 5, 2004. (SR 82-116; Vol. III) The trial court held a hearing on the Petitioner's motion to correct sentencing error on January 25, 2005. (SR 126-130; Vol. IV) At the conclusion of the hearing, the trial court denied the Petitioner's motion to correct sentencing error. (SR 117-120; Vol. 3; SR 129-130; Vol. IV) On appeal, the Petitioner argued that a single criminal episode occurred during the Petitioner's commission of all four charged offenses. The Fifth District found that two separate criminal episodes occurred, namely, that the burglary of the convenience store and grand theft of the cigarettes

in the convenience store occurred together before the battery and the resisting with violence were committed by the Petitioner on Officer Denys Neff. ***Reeves v. State***, 920 So.2d 724, 725 (Fla. 5th DCA 2006).

The applicable standard of appellate review as to whether the trial court has improperly sentenced the Petitioner under the prison releasee reoffender (PRR) statute is *de novo*. ***Powell v. State***, 881 So.l2d 1180 (Fla. 5th DCA 2004) Further, this Court in ***Wilson v. State***, 467 So.2d 966 (Fla. 1985), held that a single continuous criminal episode occurred in that case even though the sole victim was confronted by the defendant, as the victim attempted to enter her apartment, then forced into the defendant's vehicle, driven a short distance, and raped. The key focus for the determination of a single, continuous episode was whether there was a temporal break in the chain of ongoing criminal activity and whether the separate criminal activity occurred at a different location. *Id*. See Also ***Spivey v. State***, 789 So.2d 1087 (Fla. 2d DCA 2001), and ***Macias v. State***, 673 So.2d 176 (Fla. 4th DCA 1996).

Sub judice, the testimony presented during the trial below clearly establishes that each of the Petitioner's offenses occurred during a single criminal episode, without any temporal break in the Petitioner's actions. Specifically, according to Officer Denys Neff's testimony, she arrived at the Chevron gas

station/convenience store and noticed two vehicles parked in front of the store. (T 23-25; Vol. V) At this same time, Officer Neff further testified that she observed a broken window and a male individual, bending underneath the bar across the broken convenience store window with a box in his hand. (T 25; Vo. V) Once this individual became aware of Officer Neff, he dropped the box and ran towards the back of the two vehicles. (T 25-26; Vo. V)

Officer Neff next testified that she saw two other male individuals, one of whom was the Petitioner, appear from behind one of the two parked vehicles, a Cadillac, which had the trunk open. (T 26-27, 35-38; Vol. V) These two male individuals, according to Officer Neff, then ran towards Tabbins Street and across in front of the Chevron store following the first male suspect. (T 27-28; Vo. V) It was at his point, according to Officer Neff, that the two male individuals ran back behind the Chevron store, followed by one of the male individuals running into the woods and the Petitioner getting into a small green Ford vehicle. (T 28-29; Vo. V) As the Petitioner in the Ford vehicle proceeded on to Tabbins Street, the vehicle began to slow down as Officer Neff maintained her pursuit. (T 29-30; Vol. V) Officer Neff's additionally testified that she next observed the Petitioner exit the driver's side door of the vehicle, while the vehicle continued to roll forward, pinning him between the hedge as he ran in front of the vehicle. (T 30; Vol. V)

Officer Neff ordered the male individual to "stay down," but he attempted to wiggle free. (T 30-31; Vol. V)

Just as the Petitioner continued to wiggle out from the vehicle, Officer Neff grabbed his shoulder while he grabbed her arm. (T 31; Vol. V) Officer Neff additionally testified that they were standing face-to-face at this point and continued to wrestle as they both eventually broke away from each other. (T 31-32; Vol. V) Officer Neff then again attempted to get a hold of the Petitioner by grabbing onto his jacket, but he wiggled free from his jacket and took off into a wooded area. (T 31-32; Vol. V)

These aforementioned facts, as reflected in the State's information that charged the burglary, grand theft, resisting with violence a law enforcement officer, and battery upon a law enforcement officer offenses, reflect a single on-going criminal episode. In effect, the Petitioner was confronted by Officer Neff as he and the co-defendants exited the store, while the burglary was still in progress, during which a struggle ensues between Officer Neff and the Petitioner. Further, Officer Neff is the law enforcement officer named in both the battery on a law enforcement officer and resisting a law enforcement officer with violence offenses charged in the instant information. (SR 58-59; Vol. 1)

Thus, the Fifth District incorrectly determined that two separate criminal

episodes occurred. See ***Staley v. State***, 892 So.2d 400 (Fla. 2d DCA 2002), which also defined a single criminal episode as an ongoing series of events which takes place in the same general area or location. Similarly in ***Garrison v. State***, 654 So.2d 1176 (Fla. 1st DCA 1994), the First District Appellate Court also addressed a situation where an aggravated assault offense was committed by the defendant in that case in the same time period and area of the convenience store where the defendant initially committed a robbery. See also ***Ward v. State***, 615 So.2d 197, 199 (Fla. 1st DCA 1993). Just as the situation in ***Garrison supra,*** the Petitioner's instant offenses were committed in the same general area of the Chevron gas station store. Accordingly, this Court should, contrary to the Fifth District's determination below, find that only a single criminal episode occurred based on the uncontroverted facts of this case.

POINT TWO

THE FIFTH DISTRICT ERRONEOUSLY HELD THAT A PRISON RELEASEE REOFFENDER SENTENCE IS NOT AN ENHANCED SENTENCE.

The applicable standard of appellate review as to whether the trial court has improperly sentenced the Petitioner under the prison releasee reoffender statute is *de novo*. ***Powell v. State***, 881 So.2d 1180 (Fla. 5th DCA 2004) The Fifth District Appellate Court below directly relied on its decision in ***Powell*** as to whether or not the Petitioner's Prison Releasee Reoffender (PRR) sentence at issue, when imposed consecutively by the trial court with the Petitioner's additional sentences under the Criminal Punishment Code (CPC), exceeded the statutory maximum for each of the applicable criminal offenses. ***Reeves v. State***, 920 So.2d 724 (Fla. 5th DCA 2006). Specifically, the Fifth District relied on ***Powell***, ***supra***, to conclude that the Petitioner's four consecutive five (5) year incarceration terms for the instant charged offenses imposed by the trial court did not violate this Court's holdings in ***Hale v. State***, 630 So.2d 521 (Fla. 1993), and ***Daniels v. State***, 595 So.2d 952 (Fla. 1992), even though the Petitioner was sentenced as a prison releassee reoffender (PRR), under Section 775.082 (9)(a) 1.o., Florida Statutes (1999), for the resisting a law enforcement with violence offense to the maximum

possible sentence under that statute of five (5) years incarceration without any accumulation of any prison gain time. The underlying basis provided for the Fifth District's affirmance of the trial court's total twenty (20) year sentencing structure was that the PRR statute imposes only imposes a minimum mandatory sentence, but not an enhancement sentence. ***Reeves***, ***supra***, 726. Thus, the Fifth District reasoned, under ***Powell***, ***supra***, the trial court is free to "blend" a PRR incarceration sentence with consecutively running Criminal Punishment Code (CPC) incarceration sentences since the PRR sentence is not an "enhanced" sentence. The Fifth District, however, acknowledged that its holding in ***Reeves***, ***supra***, is in conflict with the Second District Appellate Court's decision in ***Rodriguez v. State***, 863 So.2d 908 (Fla. 2d DCA 2004). In ***Rodriguez***, the Second District held that a blended total sentence of a combination of a Prison Releasee Reoffender sentence, followed by Criminal Punishment Code sentences, violates this Court's decision in ***Hale v. State***, 630 So.2d 521 (Fla. 1993), and in ***Daniels v. State,*** 595 So.2d 952 (Fla. 1992). This is because the total sentence exceeds the maximum possible sentence the defendant could have received if concurrent prison releasee reoffender sentences had been imposed by the trial court. See also, ***Kiedrowski v. State***, 876 So.2d 692 (Fla. 1st DCA 2004).

The critical factor in ***Rodriguez***, ***supra***, ***Hale***, ***supra***, and ***Daniels***, ***supra***, is

that the applicable enhancement statute that is imposed by the trial court at sentencing is the maximum enhanced penalty that the particular enhancement statute requires. The applicable enhancement statutes the Petitioner was sentenced under sections 775.082 (9)(a) 2, and 775.082(9)(b), Florida Statutes, mandate that the trial court impose the statutory maximum of five (5) years incarceration for the third degree felony offense of resisting a law enforcement office with violence. That is exactly what the trial court below imposed for this offense. Contrary to the Fifth District's analysis in the present case, therefore, no "minimum mandatory" sentencing provision that was actually imposed by the trial court as to the Petitioner's total sentence of a five (5) year PRR incarceration term, followed by three consecutive five (5) year CCP incarceration terms. Rather the Petitioner received an enhanced PRR sentence which precluded, under ***Hale supra***, the further imposition of three consecutive five (5) year CPC incarceration terms when all of the Petitioner's charged offenses clearly occurred during a single criminal episode. See also ***Heath v. State***, 924 So.2d 987 (Fla. 2d DCA 2006), in which the Second District also applied ***Rodriguez***, ***supra***, and ***Hale***, ***supra***, to require that an obstructing a law enforcement officer with violence offense, for which the defendant in that case was sentenced as a violent career criminal to fifteen years imprisonment, with a ten year minimum mandatory minimum, must run

concurrently with the additional five year incarceration sentence imposed by the trial court for the battery on a law enforcement officer offense.

Thus this Court's decisions in ***Hale***, ***supra***, and ***Daniels***, ***supra***, and the Second District's decision in ***Rodriguez, supra***, make clear that once a trial court imposes a prison releasee reoffender sentence under section 775.082(9), Florida Statutes (1999), there is a statutory maximum of only five (5) years imprisonment as a total possible punishment for a third degree felony. The offense of resisting a law enforcement officer with violence, which the trial court sentenced the Petitioner to as the third consecutive five year portion of a total twenty (20) year incarceration, term certainly exceeds the applicable CCP statutory maximum. This is because the trial court could have only imposed a total five year imprisonment term if the Petitioner had been sentenced, as to all of instant charged offenses, as a prison releasee reoffender. Any further enhancement of the Petitioner's three consecutive CPC sentences is therefore, not permitted under both ***Hale*** and ***Rodriguez.***

Even if this Court were to determine that somehow the burglary and grand theft offenses had been actually completed, before the struggle ensued between the Petitioner and Officer Neff, it would only justify a total sentence of 15 years incarceration, rather than the total 20 year incarceration term that the Petitioner is

currently serving for all four instant charged offenses. This is because there would be only two separate criminal episodes and count III, as a PRR sentence, would still have to run concurrent with the battery on a law enforcement officer offense charged in count IV since it occurred at the same time the count III offense occurred. In sum, Petitioner contends that, reading ***Rodriguez***, ***supra***, ***Hale***, ***supra***, and ***Daniels***, ***supra***, together, once the trial court in the instant case imposed a prison releasee reoffender sentence for the resisting a law enforcement officer with violence offense, the trial court was limited to a total of four concurrent five (5) year maximum incarceration terms for all four of the charged offenses which occurred during a single criminal episode. Accordingly this Court should reverse the Fifth District Appellate Court's decision in ***Reeves***, ***supra***, and remand this case to the Fifth District to issue an opinion which requires the Petitioner to be resentenced to four concurrent five (5) year incarceration terms, based on each of the Petitioner's offenses in the instant case occurring during a single criminal episode, with count III being designated as a Prisoner Releasee Reoffender sentence.

CONCLUSION

Based upon the foregoing arguments and authorities cited herein, Petitioner respectfully requests this Honorable Court to reverse the decision of the Fifth District Appellate Court, remand this case to the Fifth District Court of Appeal to issue a new opinion vacating each of the Petitioner's sentences, and to require that the Petitioner be resentenced by the trial court in this case to concurrent five (5) year incarceration terms, with the resisting a law enforcement officer with violence offense, (count III), designated as a Prisoner Releasee Reoffender sentence as part of a single criminal episode.

Respectfully submitted,

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

_____
SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0845566
444 Seabreeze Boulevard, Suite 210
Daytona Beach, Florida 32118
(386) 252-3367

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Charles J. Crist, Jr., Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal and mailed to: Leroy B. Reeves, DOC #519704, Avon Park Correctional Institution, P. O. Box 1100, Avon Park, FL 33826-1100, on this date of August _____, 2006

_____

SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in the brief is 14 point proportionally spaced Times New Roman.

_____

SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER

IN THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT
STATE OF FLORIDA

LEROY B. REEVES,

Appellant,

vs. CASE NO. 5D04-2295

STATE OF FLORIDA,

Appellee.
_____/

A P P E N D I X