IN THE SUPREME COURT OF FLORIDA

LEROY REEVES,

Petitioner,

vs. FSC CASE NO. :

STATE OF FLORIDA, FIFTH DCA NO. : 5D04-2295

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON JURISDICTION

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

The case and factual circumstances set out in ***Reeves v. State***, 31 Fla.L. Weekly D429 (Fla. 5th DCA, February 10, 2006) are as follows:

> Leroy Reeves appeals the trial court's denial of his motion to correct an illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). [FN1] Reeves argues that his consecutive sentences are illegal because his crimes arose out of a single criminal episode. He also contends, and the State concedes, that his prison releasee reoffender ("PRR") sentence should be served prior to his other sentences. We conclude that it was not error to impose a single PRR sentence followed by consecutive criminal punishment code sentences, even if the crimes did arise from a single criminal episode. We reverse only to the extent necessary for the trial court to clarify the sentencing documents to reflect that the PRR sentence must be served first to allow Reeves the opportunity to earn gain time and to preserve his entitlement to any possible early release. ***Powell v. State***, 881 So.2d 1180, 1182 (Fla. 5th DCA 2004).

Reeves was convicted of four third-degree felonies: burglary of a structure, grand theft, resisting a law enforcement officer with violence, and battery on a law enforcement officer. Reeves was sentenced to five years in prison on each charge to be served consecutively, including a PRR sentence for resisting a law enforcement officer with violence. In denying Reeves's rule 3.800 motion, the trial court concluded that each of Reeves's offenses were separate and not part of one

criminal episode. Our review of the record leads us to the conclusion that the burglary of a structure and the grand theft charges arose from a single incident, while the resisting arrest and battery on a law enforcement officer occurred as part of a separate criminal episode. However, our conclusion that Reeves engaged in two criminal episodes, and not four, does not change the result.

Reeves challenges his sentence premised on the holdings in ***Daniels v. State***, 595 So.2d 952 (Fla.1992), and ***Hale v. State***, 630 So.2d 521 (Fla.1993). In ***Daniels***, the Florida Supreme Court held that a court sentencing a defendant for two or more crimes occurring in a single criminal episode could not enhance the sentences pursuant to the habitual violent felony offender statute, and also order the sentences to be run consecutively. In ***Hale***, the Florida Supreme Court extended the holding of ***Daniels*** to apply to consecutive habitual offender sentences, concluding that the Legislature's intent to increase the punishment for such offenses "is satisfied when the maximum sentence for each offense is increased." ***Hale***, 630 So.2d at 524. Application of the rule established in ***Daniels*** and ***Hale*** has been problematic, as the Florida sentencing statutes have become more complex, entailing numerous reclassification, enhancement and minimum mandatory provisions. [FN2]

Reeves finds support for his position in ***Rodriguez v. State***, 883 So.2d 908 (Fla. 2d DCA 2004). In ***Rodriguez***, the circuit court sought to avoid the proscription of ***Hale*** and ***Daniels*** by imposing standard criminal punishment code sentences consecutive to a PRR sentence. The second district court reversed, concluding that sentences, which combine or blend enhanced and unenhanced sentences to impose a total sentence that exceeds the sentence permitted under the applicable enhancement statute, were illegal. ***Rodriguez***, 883 So.2d at 910.

We disagree with the holding in ***Rodriguez*** because it treats a PRR sentence as an enhanced sentence, rather than as a minimum mandatory sentence. Unlike a habitual offender sentence, 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. §§ 775.082(9), Fla. Stat. (2004); ***Powell***, 881 So.2d at 1182 (noting that "[t]he PRR statute is properly viewed as a minimum mandatory statute, which establishes a sentence in Florida").

"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." ***Fuller v. State***, 867 So.2d 469, 470 (Fla. 5th DCA 2004). 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. As we said in ***Powell****:*

> It is entirely possible that a defendant could commit an enumerated offense subject to PRR designation and another offense not enumerated, or one for which the state does not seek such a sentence, in the same criminal episode.... [T]he trial judge should not be barred from imposing consecutive sentences, as long as the PRR sentence is served first.

881 So.2d at 1182.

For these reasons, we conclude 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 if the crimes arise from a single episode. In doing so, we acknowledge our conflict with ***Rodriguez v. State***, 883 So.2d 908 (Fla. 2d DCA 2004).

We affirm the trial court's denial of Reeves's motion to correct his sentences. We remand the matter so that the sentencing documents can be amended to reflect that the PRR sentence must be served first.

AFFIRMED IN PART; REMANDED.

The Petitioner timely filed a Notice to Seek Discretionary Review by this Court on March 13, 2005

SUMMARY OF ARGUMENT

The decision of the Fifth District Appellate Court in the present case expressly conflicts with the decision of the Second District Appellate Court in ***Rodriguez v. State***, 853 So.2d 908 (Fla. 2 DCA 2004), which the Fifth District acknowledged in the instant opinion. Specifically, the Fifth District held that "hybrid" sentences of a prison releassee reoffender ("PRR") sentence, followed by a consecutive criminal punishment code ("CPC") sentence or sentences, is not an "enhanced" sentence even when the sentences are for offenses that occurred during a single criminal episode. Therefore, the Fifth District found no violation of double jeopardy by the trial court's imposition of this type of sentencing scheme.

The Second District, however, came to a directly contrary view. As support for the Second District's interpretation of the PRR statute under section 775.082(9), Florida Statutes, the Second District relied on this Court's decisions in ***Hale v. State***, 630 So.2d 521 (Fla. 1993), and ***Daniels vs. State***, 595 So.2d 952 (Fla. 1992). These decisions point out that the legislature's intent to increase the

punishment under the applicable enhancement statute, without specific statutory authorization for a conservative sentence to be imposed, mandates, under principles of double jeopardy, that only concurrent sentences be imposed by the trial court. Accordingly, this Court should permit certiorari review of the express and direct conflict between the Second District's decision in ***Rodriguez*** and the Fifth District's decision rendered below in ***Reeves***.

ARGUMENT

THE INSTANT DECISION RENDERED BY THE FIFTH DISTRICT APPELLATE COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT APPELLATE COURT IN ***RODRIGUEZ V. STATE***, 883 So.2D 908 (Fla. 2d DCA 2004).

The instant decision rendered by the Fifth District Appellate Court expressly and directly conflicts with the decision of ***Rodriguez v. State***, 883 So.2d 908 (Fla. 2d DCA 2004). Specifically, the Fifth District held in the present case that a "hybrid" or "blended" total sentence, which consists of a prison releassee reoffender ("PRR") sentence for one offense and a consecutive sentence for one or more other offenses committed during a single criminal episode, did not constitute an "enhanced" jeopardy violation. ***Reeves v. State***, 31 Fla. L. Weekly D 429 (Fla. 5th DCA, February 10, 2006) The Fifth District, however, directly and expressly acknowledged that its decision conflicted with the decision of the Second District in ***Rodriguez***, ***supra***, and found no double jeopardy violation of the Petitioner's PRR sentence, followed by three consecutive CPC sentences. Specifically, the

Fifth District held that a PRR sentence imposed under section 775.082 (9), Florida Statutes is not to be an "enhanced" sentence.

The Second District held, however, that under this Court's decisions in ***Hale v. State***, 630 So.2d 521 (Fla. 1993), and ***Daniels v. State***, 595 Sod.2d 952 (Fla. 1992), the imposition of a "blended" PRR sentence, followed by a CCP sentence, for offenses that occurred during a single criminal episode, amounts to a total enhanced sentence that violates double jeopardy when the separate sentences are also ordered by the trial court to run consecutively with each other. Accordingly, this Court should accept jurisdiction in the present case to resolve the acknowledged conflict between the Fifth District's decision and the decision of the Second District in ***Rodriguez, supra***.

CONCLUSION

Petitioner respectfully requests this Honorable Court to exercise its discretionary jurisdiction and accept the instant case for review.

Respectfully submitted,

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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, FL 32118, via his basket at the Fifth District Court of Appeal and mailed to: Leroy Reeves, DC#519704, Avon Park Correctional Institution, Post Office Box 1100, County Road #64E, Avon Park, Florida 33826-1100, on this date of March 23, 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

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JURISDICTIONAL BRIEF OF PETITIONER

APPENDIX

Ruiz v. State, 30 Fla. L. Weekly 1531 (Fla. 5th DCA, June 17, 2005)

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