IN THE SUPREME COURT OF FLORIDA

LEROY REEVES,	)	
	)	
PETITIONER,	)	
	)	
vs.	)	SC CASE NO. 06-504
	)	
STATE OF FLORIDA,	)	
	)	
RESPONDENT.	)	
_____	)	

ON THE DISCRETIONARY REVIEW FROM THE FIFTH DISTRICT COURT OF APPEAL

REPLY BRIEF OF PETITIONER

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

TABLE OF CONTENTS

TABLE OF CITATIONS

OTHER AUTHORITIES CITED:

REPLY ARGUMENT

IN RESPONSE TO THE RESPONDENT'S ASSERTION THAT THE FIFTH DISTRICT CORRECTLY FOUND TWO SEPARATE CRIMINAL EPISODES OCCURRED AND THAT THE TRIAL COURT COULD IMPOSE CONSECUTIVE SENTENCES UNDER SECTION 775.082(9)(A)2, FLORIDA STATUTES.

Respondent first argues that the Fifth District Appellate Court properly sentenced the Petitioner as a Prison Releassee Reoffender (PRR) under section 775.082(9)(a)2, Florida Statutes, based on Respondent's and the Fifth District's definition of a PRR sentence as only a "minimum mandatory" sentence. The Petitioner would first respond that the Respondent has misinterpreted this Court's decision in ***Grant v. State***, 770 So.2d 655 (Fla. 2000). This Court cited in ***Grant*** to the Florida Legislature's intent by the enactment of the PRR statute, section 775.082, Florida Statutes, that the statute only operate as a "minimum mandatory" when it establishes a sentencing floor " [i]f a defendant is eligible for a harsher sentence 'pursuant to [the habitual felony offender statute] or any other provision of the law, the [trial] court may, in its discretion, impost the harsher sentence.'" (Emphasis supplied.) *Id.* at 658 citing ***State v. Cotton***, 768 So.2d 345, 354 (Fla. 2000).

What is therefore clear from both of this Court's decisions in ***Grant, Supra***, and ***Cotton***, ***supra***, is that section 775.082 is viewed as a "minimum mandatory" statute when a particular offense qualifies both as a PRR offense and as a harsher enhanced offense under another separate sentencing statute. The PRR statute is not, however, viewed in a similar fashion if a defendant is also being sentenced for additional offenses, apart from the PRR offense, but which occurred during the same single criminal episode as the PRR offense(s). It is the Petitioner's position that the PRR statute then must be viewed as a sentencing enhancement statute. Indeed, in the Fourth District Appellate Court acknowledged as well in ***Kijewski v. State***, 773 So.2d 124 (Fla. 4th DCA 2000), the Prisoner Release Reoffender Act (PRRA) "requires that the maximum sentence be imposed for a particular qualified criminal offense. (Emphasis supplied.) ***Id.*** at 125 Thus, there is no doubt a PRR sentence is an "enhanced" sentence even when a PRR sentence is part of a total sentence that does not exceed the collective statutory maximums for each of the criminal offenses that make up the total sentence.

Respondent next contends this Court's decisions in ***Hale v. State***, 630 So.2d 521 (Fla. 1994), and ***Daniels v. State***, 595 So.2d 952 (Fla. 1992), found an enhanced sentence to be "accomplished" or "satisfied" only when the "maximum [habitual felony offender] sentence for each offense is increased." (Respondent's

answer brief pages 8-9) Respondent misreads both of these decisions since neither decision is solely limited to when consecutive maximum habitual felony offender sentences are imposed by the trial court for each offense that occurs in a single criminal episode in order to be found to violate double jeopardy principles. All that is required to violate double jeopardy under ***Hale*** and ***Daniels*** is that the consecutive sentences include an enhanced sentence. For example, consecutive habitual felony offender sentences of five years for one third degree felony offense and ten years for a second third degree felony offense, both of which occurred during a single criminal episode, would run afoul of this Court's holding in ***Hale***, ***supra***. This is because the total sentence, fifteen (15) years, exceeds the ten year maximum habitual felony offender sentence permitted for third degree felony offenses.

Similarly, in ***Kiedrowski v. State***, 876 So.2d 692 (Fla. 1st DCA 2004), the trial court's imposition of a ten year habitual felony offender incarceration sentence for a third degree felony offense, followed by a two year non-habitual felony offender sentence, also for a third degree felony offense, was found to violate the dictates of ***Hale***, ***supra***. The total sentence of twelve years still exceeded the maximum habitual felony offender permitted punishment of ten years, since both third degree felony offenses occurred during a single criminal

episode. This is exactly why the trial court's total twenty (20) year sentence imposed below violates ***Hale*** since the Petitioner's total sentence of twenty (20) years, comprised of four consecutive five year incarceration terms, exceeds the total maximum required sentence of five (5) years, day for day, under the PRR statute. As this Court further explained in ***State v. Hill***, 660 So.2d 1384 (Fla. 1995), without specific authorization in the habitual felony offender statute to do otherwise, not only the minimum mandatory portion of a habitual violent felony offender sentence, but also the entire portion of a habitual violent felony offender sentence must run concurrently with the entire portion of other habitual violent felony offender sentences that occur during a single criminal episode under both ***Daniels***, ***supra***, and ***Hale***, ***supra***. See also ***Pangburn v. State***, 661 So.2d 1182 (Fla. 1995); and ***Parks v. State***, 701 So.2d 653 (Fla. 4th DCA 1997).

The Second District in ***Heath v. State***, 924 So.2d 987 (Fla.2d DCA 2006), also cited to both ***Rodriguez v. State***, 883 So.2d 908 (Fla. 2d DCA 2004), and ***Kiedrowski***, ***supra***, in determining that a fifteen year violent career criminal incarceration term for a resisting a law enforcement officer with violence offense, followed by a five year Criminal Punish Code (CPC) incarceration term for a battery on a law enforcement officer offense, was contrary to this Court's ***Hale***, ***supra***, decision. The Second District held both offenses occurred during a single

criminal episode and, therefore, the total sentence exceeded the maximum fifteen (15) year permitted sentence for a third degree felony under the violent career criminal statute. See Section 775.084(4)(d), Florida Statutes. Consequently, the Petitioner's argument that the Petitioner's total sentence can not exceed five years, the maximum permitted sentence under the PRR statute for a third degree felony offense, does not, as Respondent asserts, "defy logic" in light of the aforementioned case law.

Finally, Respondent submits that the Fifth District was correct in finding that two separate criminal episodes, i.e., one which involved the burglary of the convenience store along with the grand theft of the cigarettes from the convenience store, and the second which involved the battery and resistance with violence of Officer Denys Neff. As support of this assertion, Respondent cites to the decisions of ***Turner v. State***, 901 So.2d 233 (Fla. 5th DCA 2005), ***State v. Paul***, 934 So.2d 1167 (Fla. 2006), ***Jenkins v. State***, 884 So.2d 1014 (Fla.1st DCA 2004), ***Victor v. State***, 774 So.2d 722 (Fla. 3d DCA 2001), and ***Sprow v. State***, 901 So.2d 233 (Fla. 5th DCA 2005). The Respondent also incorrectly states that the Petitioner "left the scene of the burglary and grand theft when he was first observed by Officer Neff.....ran off, came back to a vehicle and drove off." (Respondent's answer brief page 16)

The Petitioner would respond that the aforementioned case law is distinguishable from the instant factual circumstances and that the record establishes the Petitioner encountered Deputy Neff in front of the convenience store after only driving a short distance in the green Ford. (T 26-30; Vol. V) More importantly, the instant facts clearly establish an unbroken, continuous criminal episode that began when Officer Neff confronted the Petitioner and the co-defendants as the burglary and grand theft occurred at the convenience store. (T 29-31, Vo. 5) The Petitioner's struggle with Officer Neff took place just after he and the co-defendants exited the convenience store and before the Petitioner eventually broke free of Office Neff and left the immediate area in front of the convenience store. (T 31-32; Vol. V) There simply was no break in the ongoing chain of events that led to the Petitioner's four charged criminal offenses as a result of the single criminal episode.

As for ***Turner***, ***supra***, that case involved two totally separate locations and different time periods when the separate criminal acts occurred. ***Sprow***, ***supra,*** involved two burglaries of two separate structures that occurred at different times on the same day. ***Paul***, ***supra***, involved two distinct and separate criminal episodes of lewd and lascivious conduct/exhibition that occurred at different times and in different locations within the same residence. In ***Jenkins***, ***supra***, and

Victor, ***supra***, the criminal offenses again occurred at separate locations and during different time periods. Accordingly, because only a ***single*** criminal episode occurred in the present case this Court should reverse the decision of the Fifth District, and remand this case for reconsideration in accordance with ***Rodriguez***, ***supra.***

CONCLUSION

Based upon the arguments and authorities cited herein, and in the Petitioner's initial brief, Petitioner respectfully requests this Honorable Court 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 Prison Releassee 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, Fifth Floor, Daytona Beach, Florida 32118 via his basket at the Fifth District Court of Appeal; and mailed to Leroy B. Reeves, DC#519704, Avon Park C. I., P.O. Box 1100, County Road #64 E, Avon Park, Florida 33826-1100, this 21st day of September, 2006.

_____
SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I HEREBY CERTIFY that the font used in this brief is 14 point proportionally spaced Times New Roman.

_____
SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER