

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-2483

LAVARESS HOPKINS,)
)
 Petitioner,)
)
)
)
)
 STATE OF FLORIDA,)
)
 Respondent.)
)
)
 _____)

PETITIONER’S BRIEF ON THE MERITS

ON PETITION FOR DISCRETIONARY
REVIEW FROM THE DISTRICT COURT
OF APPEAL OF FLORIDA, FOURTH
DISTRICT

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STATEMENT OF THE CASE AND FACTS

Respondent charged petitioner with battery by a detainee in a juvenile detention facility in violation of sections 784.03 and 784.082, Florida Statutes (2007). R1. Section 784.082 is an enhancement statute that reclassifies simple battery from a first degree misdemeanor to a third degree felony “[w]henver a person who is being detained in a prison, jail, or other detention facility is charged with committing . . . a battery . . . upon any other detainee in the detention facility, . . .” § 784.082(3), Fla. Stat. (2007). All parties before the trial court agreed that the facility in question was a juvenile detention facility. T3. Petitioner filed a motion to dismiss under the authority of *T.C. v. State*, 852 So.2d 276 (Fla. 1st DCA 2003) (“Nothing in section 784.032 indicates that the statute applies to juveniles held in juvenile facilities.”). R43-44. The trial court granted Petitioner’s motion to dismiss. R55-58. Respondent took appeal before the Fourth District Court of Appeal.

The Fourth District Court reversed the granting of the motion to dismiss citing *J.A. v. State*, 743 So.2d 601 (Fla. 4th DCA 1999), and *J.A.D. v. State*, 855 So.2d 1199 (Fla. 5th DCA 2003), and remanded the case for reinstatement of the charge. *State v. Hopkins*, 47 So.3d 974 (Fla. 4th DCA 2010). On December 16, 2010, petitioner filed notice of intent to invoke the discretionary jurisdiction of this Court based on a conflict between this decision and that of other district courts of

appeal. By court order dated June 1, 2011, this Honorable Court accepted jurisdiction. This brief on the merits follows.

SUMMARY OF THE ARGUMENT

The trial court did not err in granting Petitioner's motion to dismiss as the First District Court of Appeal properly held that section 784.082 could not be used to enhance the penalty for a juvenile charged with battery by an inmate in a juvenile facility as that statute does not specifically indicate that it applies to juveniles held in juvenile facilities. *T.C. v. State*, 852 So.2d 276 (Fla. 1st DCA 2003).

ARGUMENT

THE TRIAL COURT DID NOT ERR IN GRANTING PETITIONER’S MOTION TO DISMISS.

The trial court granted Petitioner’s motion to dismiss based on the authority of *T.C. v. State*, 852 So.2d 276 (Fla. 1st DCA 2003). The Fourth District Court of Appeal reversed the trial court citing its own opinion in *J.A. v. State*, 743 So.2d 601 (Fla. 4th DCA 1999) and the Fifth District Court’s opinion in *J.A.D.*, 855 So.2d 1199 (Fla. 5th DCA 2003). *State v. Hopkins*, 47 So.3d 974 (Fla. 4th DCA 2010). In both *J.A.* and *J.A.D.*, the District Courts affirmed adjudications of juveniles found guilty of battery on a fellow detainee in violation of Florida Statute section 784.082. But both of these opinions are conclusory in nature and do not address the issue whether section 784.082 even applies to juveniles held in juvenile facilities. These two opinions should have little value as precedent before this Court.

The First District Court’s opinion in *T.C.* is grounded on the well-known “Rule of Lenity” employed in the construction of criminal statutes. *See* § 775.021(1), Fla. Stat. (2007) (“The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.”). Application of this rule means that if there is a reasonable construction of a penal statute favorable to the accused, the court must employ that construction. *State v.*

Williams, 776 So.2d 1066, 1070 (Fla. 4th DCA 2001). *See also McLaughlin v. State*, 721 So.2d 1170, 1172 (Fla. 1998) (it “is a well-established canon of construction that words in a penal statute must be strictly construed”). The trial court properly dismissed Petitioner’s felony charge, based on the precedent of *T.C.* that “[n]othing in section 784.082 indicates that the statute applies to juveniles held in juvenile facilities.” *T.C.*, 852 So.2d at 276.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests this Honorable Court to reverse the opinion of the Fourth District Court of appeal and reinstate the trial court's order granting Petitioner's motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to CELIA TERENZIO, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 N. Flagler Drive, West Palm Beach, Florida 33401, by courier this _____ day of June, 2011.

Of Counsel

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY the instant brief has been prepared with 14 point Times New Roman type, in compliance with a R. App. P. 9.210(a)(2).

Tom Wm. Odom
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LAVARESS HOPKINS,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the appendix to the Petitioner's Brief on the Merits hereof has been furnished to CELIA TERENZIO, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 N. Flagler Drive, West Palm Beach, Florida 33401, by courier this _____ day of June, 2011.

Tom Wm. Odom
Assistant Public Defender