IN THE SUPREME COURT OF FLORIDA

Charles Paul,
Petitioner,

v.

State of Florida,
Respondent.

Case No.: SC11-690

PETITIONER'S JURISDICTIONAL BRIEF

(On review from the Fourth District Court of Appeal, State of Florida)

Respectfully submitted,

Charles Paul, *pro se*
Everglades Correctional Institution
1599 SW 187th Ave.
Miami, Fl. 33194-2801
DC# L30122

Table of Contents

Table of Contents ii

Table of Citations iii

Statement of the Case and Facts 1

Summary of the Argument 2

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL CANNOT BE RECONCILED WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN CRAPPS V. STATE, 968 SO.2D 627 (FLA. 2ND DCA 2007), WHEREIN THE SECOND DISTRICT HELD THAT A CONVICTION FOR SHOOTING A DEADLY MISSILE INTO AN OCCUPIED VEHICLE DOES NOT QUALIFY AS A FORCIBLE FELONY UNDER THE PRISON RELEASE REOFFENDER STATUTE.

Jurisdictional Statement 2

Argument 3

Conclusion 5

Certificate of Compliance 6

Certificate of Service 6

Appendix 7

TABLE OF CITATIONS

Cases **Page No(s).**

Crapps v. State, 968 So.2d 627 (Fla. 2nd DCA 2007) .....ii, 1, 2, 3, 5

Hudson v. State, 800 So.2d 627 (Fla. 3rd DCA 2001).....3

Paul v. State, 958 So.2d 1135, 1136-38 (Fla. 4th DCA 2007).....3

Perkins v. State, 576 So.2d 1310 (Fla. 1991).....4

State v. Hearns, 961 So.2d 211 (Fla. 2007).....3

OTHER AUTHORITIES

Art. V, §3(b)(3), Fla. Const. (1980) 2

Fla. R. App. P. 9.030(a)(2)(A)(iv).....2

Fla. R. App. P. Rule 9.210.....6

Fla. Stat. 775.082.....1, 2, 3

Fla. Stat. 790.19.....4

STATEMENT OF THE CASE AND FACTS

The Petitioner was convicted after a jury trial in the Seventeenth Judicial Circuit, in and for Broward County, of one (1) count of shooting a deadly missile into an occupied vehicle. At sentencing, the trial court ruled that this conviction qualified the petitioner as a Prison Releasee Reoffender (PRR), where this offense had been committed within the provisions of Fla. Stat. 775.082 and sentenced him as such.

Petitioner then filed a Motion for Post Conviction Relief, there challenging as one of his grounds the legality of the trial court classifying him as a prison releasee reoffender based upon his conviction for shooting a deadly missile into an occupied vehicle. After summary denial by the trial court, Petitioner appealed the denial of his motion to the 4th DCA with that court denying his claim, but certifying conflict. It is the order by the Fourth District Court of Appeal denying Petitioner's claim and certifying conflict with the decision of the Second District Court of Appeal in Crapps v. State, 968 So.2d 627 (Fla. 2nd DCA 2007) that is the subject of this brief.

SUMMARY OF THE ARGUMENT

At issue here is whether the offense of shooting a deadly missile into an occupied vehicle qualifies as a "forcible felony" for PRR classification under Section 775.082(9)(a)1.0, Fla. Stat.; the forcible felony catch-all provision of the PRR statute.

In the case at bar, the Fourth District Court of Appeal has determined that this offense does in fact qualify for PRR classification; there certifying conflict with the Second District Court of Appeal in Crapps v. State, 968 So.2d 627 (Fla. 2nd DCA 2007), where that Court arrived at the opposite conclusion.

Thus, Petitioner contends that the decision of the Fourth District Court of Appeal expressly and directly conflicts with a previous decision of the Second District Court of Appeal, therefore requiring resolution by this Court.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a District Court of Appeal that expressly and directly conflicts with a decision of the Supreme Court or another District Court of Appeal on the same point of law. Art. V, §3(b)(3), Fla. Const. (1980); Fla. R. App. P. 9.030 (a) (2) (A) (iv).

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL CANNOT BE RECONCILED WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN CRAPPS V. STATE, 968 SO.2D 627 (FLA. 2ND DCA 2007), WHEREIN THE SECOND DISTRICT HELD THAT A CONVICTION FOR SHOOTING A DEADLY MISSILE INTO AN OCCUPIED VEHICLE DOES NOT QUALIFY AS A FORCIBLE FELONY UNDER THE PRISON RELEASE REOFFENDER STATUTE.

On March 16, 2011 the Fourth District Court of Appeal denied with an opinion the Petitioner's claim that his conviction for the offense of shooting a deadly missile into an occupied vehicle did not qualify him for classification under the PRR statute, section 775.082(9)(a)1.0, Fla. Stat. (2001). See Exhibit A for a conformed copy of the order.

In arriving at this conclusion and when applying the strict statutory elements analysis required by State v. Hearns, 961 So.2d 211 (Fla. 2007), the Fourth District determined that this offense necessarily includes the use of force or violence against an individual, there stating that "to commit a violation of section 790.19, a vehicle must be occupied."

The Fourth District went on to distinguish the instant case from Paul v. State, 958 So.2d 1135, 1136-38 (Fla. 4th DCA 2007) and Hudson v. State, 800 So.2d 627 (Fla. 3rd DCA 2001), where the defendants in those cases were convicted of shooting into a building. In so doing, the Fourth District reasoned that

under that aspect of Section 790.19, Fla. Stat., a building may be occupied or unoccupied and as such, does not necessarily require the use of force or violence against an individual as required to qualify under the catch-all provision of the PRR statute as a forcible felony.

As a result of this opinion, the Fourth District has determined that there can be no other way to commit the offense of shooting into a vehicle without that vehicle being occupied.

The Petitioner contends that such a finding is contrary to the plain meaning of the language of Section 790.19, Fla. Stat. as it applies to vehicles, where the statute clearly provides for two (2) alternative means by which a defendant can commit such an offense. The relevant language Petitioner is referring to is "...or vehicle of any kind which is being used by or occupied by any person...," Section 790.19, Fla. Stat. (2001) (emphasis by writer).

Petitioner further contends that, when applying the strict statutory elements analysis as required by State v. Hearns, supra and Perkins v. State, 576 So.2d 1310 (Fla. 1991), a particular offense cannot qualify as a forcible felony unless all the alternative means to commit that offense involve the use of force or violence against an individual. Because shooting into a vehicle which is being used by any person does not necessarily require that the vehicle be occupied, Petitioner asserts that this particular aspect of Section 790.19 Fla. Stat. does not qualify as a forcible

felony under Hearns or Perkins. To conclude otherwise would lead to outrageous results. Hearns @ 219.

In Crapps v. State, 968 So.2d 627 (Fla. 2nd DCA 2007) the Second District Court of Appeal came to the opposite conclusion of the Fourth District in a case that is factually indistinguishable from Petitioner's.

Here, the Second District applied the same statutory elements test enunciated in Hearns, supra and cited to the same two (2) cases in support of their finding; Paul, supra and Hudson, supra. Yet despite this common reliance, the Second District determined that a conviction for shooting into an occupied vehicle did not qualify as a forcible felony for classification under the PRR statute.

Thus, the conclusion reached by the Fourth District in the instant case is in express and direct conflict with the previous decision of the Second District in Crapps, supra.

CONCLUSION

The Petitioner respectfully requests the Florida Supreme Court accept jurisdiction in order to resolve the conflict between the Second District and Fourth District Courts of Appeal on this particular point of law. Specifically, the Petitioner requests this Court **1.**) Review for continued applicability the test articulated in Hearns and Perkins, supra for determining whether an offense is a forcible felony; **2.**) Analyze the conflict between the Second and Fourth District Courts of Appeal

and 3.) Upon a finding of the continued applicability of Hearns and Perkins, apply that test to the offense of shooting a missile into an occupied vehicle for purposes of qualification as a forcible felony under the PPRR statute; thereby resolving the conflict between the District Courts.

Respectfully submitted,

Charles Paul, pro se

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Brief complies with the font requirements as set forth in Fla. R. App. P. Rule 9.210.

/s/
Charles Paul, *pro se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief has been furnished to the Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399 by placing this document in the hands of prison officials for mailing by First Class United States Mail, postage pre-paid on this the 3 day of June, 2011.

/s/
Charles Paul, *pro se*
Everglades Correctional Institution
1599 SW 187th Ave.
Miami, Fl. 33194-2801
DC# L30122