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IN THE SUPREME COURT OF FLORIDA

WILLIAM R. CREWS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC14-319

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, FIRST DISTRICT

RESPONDENT'S ANSWER BRIEF

PAMELA JO BONDI
ATTORNEY GENERAL

TRISHA MEGGS PATE
TALLAHASSEE BUREAU CHIEF,
CRIMINAL APPEALS
FLORIDA BAR NO. 45489

JENNIFER J. MOORE
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0495921

OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
JENNIFER.MOORE@MYFLORIDALEGAL.COM
CRIMAPPTLH@MYFLORIDALEGAL.COM
(850) 414-3300
(850) 922-6674 (FAX)

COUNSEL FOR RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, William R. Crews, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

The record on appeal will be referenced according to the respective number designated in the Index to the Record on Appeal. "IB" will designate Petitioner's Initial Brief. Each symbol will be followed by the appropriate page number in parentheses.

All emphasis through bold lettering is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The State accepts Appellant's statement of the case and facts as being generally supported by the record, subject to the following additions:

The State charged Crews with fourteen felony counts involving five victims. In counts 1-5, Crews was charged with sexual activity with a child under 18 by a person in custodial authority, lewd exhibition, showing obscene material to a child, and two counts of lewd molestation, all related to victim J.T. occurring between June 2001 and June 2003. In counts 6-9, Crews was charged with sexual activity by a person in custodial

authority, lewd molestation, lewd exhibition, and showing obscene material to a child, relating to victim J.E. occurring between June 2004 and June 2006. In Count 10, Crews was charged with lewd exhibition in the presence of a minor, J.S., between 2001 and 2002. In count 11, Crews was charged with showing J.S. obscene material between June 2010 and May 2011. Counts 12 and 13 alleged that, between January 2011 and May 2011, Crews engaged in lewd exhibition in the presence of a minor, C.H. and showed him obscene material. In count 14, Crews was charged with showing obscene material to R.K. between January 2011 and May 2011.

In his deposition, J.E., testified that he met Appellant at the Bozeman school in seventh grade, but that he was not in Appellant's class until eighth grade. (R.VIII-443) J.E. testified that, while he was in seventh grade, between Christmas and the end of the school year, Appellant started showing him pornography and gave him a beer in his hotel room while they were on a school sponsored trip. He said that trip was not the first time he had seen pornography because Appellant had previously showed pornography to him at a rented storage shed. J.E. said that Appellant would ask him if he wanted to go to a car show and would park his car at the storage shed. He said that after looking at cars, they would go back to the shed and engage in sexual activity. He said that, in the shed, Appellant had a TV, DVD player, and blow-up dolls. (R.VIII-445-48)

J.E. was unsure of the timing as to when other sexual activity started, but was sure that, when he was in eighth grade, Appellant was masturbating in front of him and started getting "touchy feely." (R.VIII-451-52) He said that he felt like he had to do what Appellant told him to do because Appellant was his teacher. (R.VIII-457,460) J.E. said that no incidents took place on school property, but that Appellant would tell him to come to his classroom after school and then he would offer to take him to get something to eat before a game or invite him to car shows. (R.VIII-463) He said that Appellant would then say "you went to the car show with me, I bought you something to eat." He said that made him feel like he had to cooperate at the shed. (R.VIII-453,457)

J.E. testified that the activities with Appellant happened through eighth grade and into the beginning of ninth grade. (R.VIII-464-65) He said some things may have occurred during the summer, but it mainly happened after school. (R.VIII-469) He said that, at school, Appellant would offer to give him rides and help him out. (R.VIII-479)

In his deposition, J.T. testified that Appellant sometimes took him out of school during seventh period to go to the Health Plex, where some of the sexual activity between he and Appellant took place. He said that Appellant had a planning period seventh period and he had band, which he could easily miss. (R.VII-414)

Defense counsel moved to dismiss counts 1 and 6 on the grounds that the undisputed facts did not establish that Crews had custodial authority over J.S. and J.E. at the time of the crimes. (R.137-40.161-64) The defense also moved to dismiss counts 2-5 and 7-10 on grounds that the prosecutions were barred by the statute of limitations and that the conduct did not occur while Crews was a "public employee" who was engaged in "misconduct in office." (R-141-60, 165-83) The State filed traverses in response to each of the motions. (R.482-526) The trial court denied both motions after a hearing. (R.193-97)

Crews pled nolo contendere to all 14 counts for a cumulative 20 year sentence, reserving the right to appeal the denial of his motions to dismiss. (R.198-200) On appeal, Crews argued that the trial court erred in denying his motion to dismiss count 6 because the undisputed facts did not show that he had custodial authority over J.E. at the time of the crime. He also argued that a public school teacher's misconduct with students that occurs away from school property does not constitute "misconduct in office" by a public employee which extends the statute of limitations period.

The First District Court of Appeal agreed with Crews as to count 6, finding that the record did not support the State's claim that Crews had custodial authority over J.E. at the time of the crime because the sexual activity between Crews and J.E. alleged in count 6 occurred away from school, at a time when

Crews was not the victim's classroom teacher, and was unconnected to a school activity.

The First District Court of Appeal then held that Crews' offenses in counts 2-5 and 7-10 constituted "misconduct in public office" within the scope of the statute extending the statute of limitations for offenses constituting misconduct in public office. Crews v. State, 130 So. 3d 698 (Fla. 1st DCA 2013).

SUMMARY OF ARGUMENT

ISSUE I

Section 775.15(12)(b), Florida Statutes provides that the statute of limitations for certain offenses committed by a public officer or employee at any time that the person is in public office or employment is extended to two years from the time that person leaves public office or employment. The State asserts that teachers are "public employees" for purposes of section 775.15(3)(b), Florida Statutes. The State agrees with the decision from the First District Court of Appeal, which held that section 775.15(3)(b), Florida Statutes may apply to the type of offenses committed by Crews while he was a public school teacher.

Although Petitioner contends that the legislature did not intend for public school teachers to be included under the statute as public employees, in 1974 the legislature amended section 775.15(3)(b), Florida Statutes to add the public "employee" to the list of persons included in the extension of the limitations period and to eliminate the reference to "offenses" committed during the officials' "terms of office" which were "connected to the duties of their office" and used the words "misconduct in office" or during their employment. Both the First District Court of Appeal and the Second District Court of Appeal have held that, in rewriting the statute, the legislature clearly indicated that it did not intend to restrict the extension of the limitations period only to those individuals who hold public office. The State agrees.

The legislature expanded the statute of limitations for certain offenses committed by public employees when the actions are committed during their employment. Teachers are clearly public employees. Petitioner relies on the definition found in the K-20 Education Code in Chapter 2012, Florida Statutes which labels teachers as "instructional personnel," however, even though the Department of Education may place employees into different subgroups, they are still public employees. Therefore, the certified question asked by the First District Court of Appeal should be answered in the affirmative.

ISSUE II

Petitioner contends that, even if he was a public employee, the statute of limitations cannot be extended because his offenses did not occur on school grounds. While the State agrees that there must be a nexus between a teacher's role and the misconduct for the extended statute of limitations to apply, the State disagrees that the misconduct has to occur on school property or be connected to a school activity for such a nexus to exist.

In this case, there is no question that Crews' actions constituted "misconduct in office." Even though the sexual contact between Crews and his victims did not occur on school property or during a school function, there was a "palpable nexux between the auspices of the office and the wrongdoing," since the illicit liaisons were arranged at the school where Crews was a teacher and the victims were students. Crews would solicit the

boys at school by encouraging them to accompany him after school or after school activities with offers to take them to eat or to go with him to car shows. He even arranged to get one of the victims out of classes to go with him to the off campus site for sexual encounters. Crews would then take the victims to a rented storage unit where he had set up a television, a DVD player and blow-up dolls. The victims indicated that they felt like they had to cooperate with Crews at the storage shed because Crews had spent money on them and was a teacher at their school. Petitioner clearly used his position as a teacher to cultivate relationships and arrange the meetings that led to the charges in this case.

As a result, §775.15(12)(b), Fla. Stat. should not be limited to activity that takes place on school property, but should also encompass misconduct with which the State can prove a nexus between the teacher's role and the prohibited activity.

ARGUMENT

ISSUE I

WHETHER THE EXTENDED STATUTE OF LIMITATIONS FOR OFFENSES BASED UPON MISCONDUCT IN OFFICE BY A PUBLIC OFFICER OR EMPLOYEE IN SECTION 775.15(12)(b), FLORIDA STATUTES APPLIES TO PUBLIC SCHOOL TEACHERS (Restated)

Standard of Review

Questions of statutory interpretation are subject to de novo review. Heart of Adoptions, Inc. v. J.A., 963 So. 2d 189, 194 (Fla. 2007). "A court's purpose in construing a statute is to give effect to legislative intent, which is the polestar that guides the court in statutory construction." Larimore v. State, 2 So. 3d 101, 106 (Fla. 2008).

Merits

Petitioner argues that the First District Court of Appeal committed error by determining that the statute of limitations extension in section 775.15(12)(b), Florida Statutes for offenses based upon misconduct in office by a public officer or employee does not apply to public school teachers. He argues that public school teachers are not public officers or public employees, but are merely "instructional personnel." The State respectfully disagrees and asserts that this Court should answer the certified question posed by the First District Court of Appeal in the affirmative because public school teachers are public employees.

In Crews v. State, 130 So. 3d 698 (Fla. 1st DCA 2013), the State charged Crews with fourteen felony counts involving five

victims. In counts 1-5, Crews was charged with sexual activity with a child under 18 by a person in custodial authority, lewd exhibition, showing obscene material to a child, and two counts of lewd molestation, all related to victim J.T. occurring between June 2001 and June 2003. In counts 6-9, Crews was charged with sexual activity by a person in custodial authority, lewd molestation, lewd exhibition, and showing obscene material to a child, relating to victim J.E. occurring between June 2004 and June 2006. In Count 10, Crews was charged with lewd exhibition in the presence of a minor, J.S., between 2001 and 2002. In count 11, Crews was charged with showing J.S. obscene material between June 2010 and May 2011. Counts 12 and 13 alleged that, between January 2011 and May 2011, Crews engaged in lewd exhibition in the presence of a minor, C.H. and showed him obscene material. In count 14, Crews was charged with showing obscene material to R.K. between January 2011 and May 2011. (R.79-81)

The defense moved to dismiss counts 2-5 and 7-10 which involved victims J.T., J.E., and J.S., on grounds that the prosecutions were barred by the statute of limitations and that the conduct did not occur while Crews was a "public employee" who was engaged in "misconduct in office." (R-141-60, 165-83) The State filed a traverse in response to the motion. (R.482-526) The trial court denied the motion after a hearing. (R.193-97)

Crews pled nolo contendere to all 14 counts for a cumulative 20 year sentence, reserving the right to appeal the denial of his

motions to dismiss. (R.198-200) On appeal, Crews argued that the trial court erred in denying his motion to dismiss count 6 because the undisputed facts did not show that he had custodial authority over J.E. at the time of the crime. He also argued that a public school teacher's misconduct with students that occurs away from school property does not constitute "misconduct in office" by a public employee which extends the statute of limitations period.

The First District Court of Appeal agreed with Crews as to count 6, finding that the record did not support the State's claim that Crews had custodial authority over J.E. at the time of the crime because the sexual activity between Crews and J.E. alleged in count 6 occurred away from school, at a time when Crews was not the victim's classroom teacher, and was unconnected to a school activity. Crews v. State, supra at 701.

The First District Court of Appeal then considered Crews' claim that counts 2-5 and 7-10 should be dismissed for expiration of the statute of limitations and found Crews' actions constituted "misconduct in public office" within the scope of the statute extending the statute of limitations for offenses constituting misconduct in public office. The First District relied mostly on LaMorte v. State, 984 So. 2d 548 (Fla. 2nd DCA 2008), which held that the extension of the statutory limitations period for any offense based upon misconduct in office by a public officer or employee applied to public school teachers. Crews v. State, supra, at 702.

At the time of Petitioner's offenses, §775.15(12)(b), Florida Statutes provided:

> (b) Any offense based upon misconduct in office by a public officer *or employee* at any time when the defendant is in public office *or employment*, within 2 years from the time he or she leaves public office *or employment*, or during any time permitted by any other part of this section, whichever time is greater.

In LaMorte, the Second District reviewed the statutory history of section 775.15(3)(b), Florida Statutes[1] and noted that it was a product of a revision in the laws in 1974. The prior version of the statute provided:

> (3) Offenses by state, county, or municipal officials committed during their terms of office and connected with the duties of their office shall be commenced within two years after the officer retires from the office. §932.465(3), Fla. Stat. (1973)

The LaMorte Court pointed out that, in the revision, the legislature edited the statute to eliminate the reference to "offenses" committed during the officials' "terms of office" which were "connected with the duties of their office." The amended statute used the words "misconduct in office" or employment and added the public "employee" to the list of persons included in the extension of the limitations period. LaMorte v. State, supra, at 551.

The LaMorte Court concluded that the legislature's act of rewriting the statute clearly indicated that it did not intend to

[1]As noted by Appellant, that subsection has been moved to §775.15(12)(b).

restrict the extension of the limitations period only to those individuals that hold public office since it included the word "employee" and referenced that employee's "employment." Id.

Petitioner argues that teachers are not "public employees," but rather are merely "instructional personnel." However, that argument is without merit. Petitioner relies on the definition found in the K-20 Education Code which labels teachers as "instructional personnel," in section 1012.01(2)(a), Fla. Stat. The K-20 Education Code of Chapter 1012 involves the administration and regulation of Department of Education employees including contracts, salaries, qualifications, leave, recruitment, retirement, and many other personnel issues. Section 1012.01 begins by stating, "Definitions - *As used in this chapter*, the following terms have the following meanings:" (emphasis supplied) In that section, the statute defines instructional personnel to include classroom teachers. The statute also defines school officers, administrative personnel, or educational support employees. Additional chapters then set forth the different requirements, qualifications, benefits, contract requirements for the different groups of education professionals.

"Classroom teachers" with librarians, education paraprofessional and other instructional staff under the heading, "instructional personnel" chapter 1012 can more easily describe the different qualifications, contracts, and personnel procedures for that group of public employees. Clearly the groupings were

intended to distinguish between the different qualifications and requirements for each group. For instance, there are certification requirements for teachers that are not applicable for administrative personnel, such as the school secretary. Separating employees of the Department of Education into groupings does not change them from a status of being a public employee. Similarly, a state employee would still be a public employee whether or not he or she was considered a career service employee or select exempt employee although the employee's benefits may differ depending on the category. Likewise, although the Department of Education may place employees into different subgroups, they are public employees nonetheless.

Section 447.203(3), Fla. Stat. provides that a "public employee" means any person employed by a public employer unless an exception applies. Section 447.203(2), Fla. Stat. provides that "public employer" or "employer" means the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. It specifically provides that "the district school board" shall be deemed to be the "public employer" with respect to all employees of the school district. (emphasis supplied)

Additionally, teachers are clearly subject to the Public Employees Relations Act. In 1969, this Court held that, with the exception of a right to strike, public employees, including

teachers, have the same rights of collective bargaining as do private employees. Dade County Classroom Teachers' Association, Inc. v. Ryan, 225 So. 2d 903 (Fla. 1969). Much more recently, this Court has also held that a teacher who assisted a fellow employee in drafting an unfair labor practice complaint was engaged in a protected activity and could not be forced to suffer adverse employment action under the statutory provision that prohibits a public employer from interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under the unfair labor practice statute. Koren v. School Board of Miami-Dade County, 97 So. 3d 215 (Fla. 2012)(discussing section 447.501, Fla. Stat.). Likewise, in 2013, when the legislature converted the Florida Retirement System for State employees from a noncontributory system to a contributory system in which all FRS members are required to contribute 3% of their salaries to the retirement system, the National Education Association became involved to argue against the legislative action because of its affect on teachers. Scott v. Williams, 107 So. 3d 379 (Fla. 2013)[2]

Florida Statutes also provides a difference between public school teachers and charter school teachers, pointing out that the latter would not be "public employees" if they choose to be part of a professional group that subcontracts with the charter

[2]This Court ultimately determined that, on its face, the statutory amendments did not unconstitutionally impair or abridge the right of public employees to bargain collectively.

school to operate the instructional program under the auspices of a partnership or cooperative that they collectively own. Section 1002.33(12)(d), Fla. Stat.

As noted by the LaMorte court, when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no need to resort to the rules of statutory interpretation and construction. Nor is there a need to consider the law of other states, such as Ohio, as Petitioner does. This is a matter of Florida statutory interpretation and the statute in this case is clear. As such, the statute must be given its plain and obvious meaning. The terms "public officer" and "public employee" are clear on their face and need no definition. Teachers are clearly public employees as they are employed by the school board and receive benefits as state employees. Therefore, the First District and Second District's opinions so holding should be affirmed.

Petitioner argues that the dissents in LaMorte and Crews were the better conclusions. However, Altenbernd's dissent focuses on the words "in office," rather than looking at the entire passage which includes public employees during public employment as persons subject to the extended statute of limitations:

> (b) Any offense based upon misconduct in office by a public officer *or employee* at any time when the defendant is in public office *or employment*, within 2 years from the time he or she leaves public office *or employment*, or during any time permitted by any other part of this section, whichever time is greater.

§775.15(12)(b)(Emphasis added) The majority did not hold that school teachers hold "offices." It held that teachers were public employees, and that the 1974 amendment to the statute included "public employees" in the category of people that were subject to an extended statute of limitations period for misconduct while they are publically employed.

The fact that teachers are described as "instructional personnel" under Chapter 1012 does not change the fact that they are still public employees, as are all employees of the school district. §447.203(2), Fla. Stat. For all of these reasons, this Court should approve the decision from the First District Court of Appeal and answer the certified question in the affirmative.

ISSUE II

WHETHER "MISCONDUCT IN OFFICE" UNDER SECTION 775.15(12)(b) ONLY APPLIES TO OFFENSES ACTUALLY COMMITTED ON SCHOOL PROPERTY OR IN CONNECTION WITH A SCHOOL ACTIVITY (Restated)

Standard of Review

As noted above, questions of statutory interpretation are subject to de novo review. Heart of Adoptions, Inc. v. J.A., supra; Larimore v. State, supra.

Merits

Petitioner argues that, if this court rejects its argument under Issue I that public school teachers are not "public employees" under §775.15(12)(b), Fla. Stat., then the misconduct in office for purposes of that statute should only cover offenses that occur on school property or in connection with a school activity. The State agrees that there must be a *nexus* between the teacher's role and the misconduct for the extended statute of limitations to apply, but disagrees that the misconduct has to occur on school property or be connected to a school activity for such a nexus to exist.

In La Morte v. State, the Second District Court of Appeal considered the definition of "misconduct in office" in the Florida Administrative Code, governing the Department of Education, since §775.15(3)(b), Fla. Stat. [3] did not define

[3]As noted by Appellant, that subsection has been moved to §775.15(12)(b).

"misconduct in office." In the Florida Administrative Code "misconduct in office" is defined as a violation of the Code of Ethics of the Education Profession as adopted in Rule 6B-1.001, FAC, and the Principles of Professional Conduct for the Education Profession in Florida as adopted in Rule 6B-1.006, FAC., *which is so serious as to impair the individual's effectiveness in the school system*. Rule 6B-4.009, FAC.

Whether conduct constitutes "misconduct in office" has to be considered on a case by case basis. The rule is discussed in a number of Florida cases. See i.e., Roberts v. Castor, 629 So. 2d 311 (Fla. 1st DCA 1993), MacMillan v. Nassau County School Board, 629 So. 2d 226,227,230 (Fla. 1st DCA 1993). The Fifth District Court of Appeals has held that "impaired effectiveness in the school system" can be inferred from certain misconduct. Summers v. School Board, 666 So. 2d 175 (Fla. 5th DCA 1995); see also, Walker v. Highlands County School Bd., 752 So. 2d 127 (Fla. 2nd DCA 2000). Even though the Summers v. School Board court did not specify what misconduct they were talking about, Appellant's illicit sexual activity with students from his class in this case clearly falls within conduct from which "impaired effectiveness in the school system" can be inferred.

The fact that the sexual contact between Appellant and the boys in this case did not take place *on school property* did not mean that there was no nexus between Crews' role as a teacher and the prohibited activity. The illicit liaisons between Appellant and the students were arranged at the school while Appellant was

a teacher and the boys were students. The boys testified that Crews would solicit them at school by encouraging them to accompany him after school or after school activities with offers to take them to eat or to car shows. J.T. even testified that Appellant sometimes took him out of school during seventh period to go to the Health Plex, where some of the sexual activity between he and Appellant took place. He said that Appellant had a planning period seventh period and he had band, which he could easily miss. There was clearly a nexus in this case between Petitioner's role as a teacher and his misconduct, even if the sexual activity did not occur on the school grounds. His conduct clearly constituted "misconduct" while Appellant was a public employee.

If a public school teacher became acquainted with a minor outside of school, like at a park or the mall during the summer, and began an illicit relationship with that minor, his or her misconduct in that case would not likely be connected to his or her role as a teacher and should not be subject to §775.15(12)(b). That was not the case here. The prohibited conduct in this case clearly fell within the purview of the statute. Petitioner clearly used his teacher's authority and position to cultivate relationships that led to the charges in this case.

Therefore, the State argues that, with respect to public school teachers, misconduct that falls under §775.15(12)(b), Fla. Stat. should not be limited to activity that taken place on

school property, but should also encompass misconduct with which the State can prove a nexus between the teacher's role and the prohibited activity.

CONCLUSION

Based on the foregoing, the State respectfully submits the certified question should be answered in the affirmative and the decision of the District Court of Appeal in Crews v. State, 130 So. 3d 698 (Fla. 1st DCA 2013) should be approved, and the judgment and sentence entered in the trial court should be affirmed.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished via the Florida Courts E-Filing portal to Counsel for Petitioner, Glen P. Gifford, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, glen.gifford@flpd2.com, and to Amicus Counsel, William A. Spillias, Florida Education Association, 213 S. Adams Street, Tallahassee, Florida 32301-1720, will.spillias@floridaea.org, this 1st day of August 2014.

Respectfully submitted and served,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Trisha Meggs Pate
_____
TRISHA MEGGS PATE
Tallahassee Bureau Chief,
Criminal Appeals
Florida Bar No. 45489

/s/ Jennifer J. Moore
_____
JENNIFER J. MOORE
Assistant Attorney General
Florida Bar No. 0495921

Attorneys for State of Florida
Office of the Attorney General
Pl-o1, the Capitol
Tallahassee, Fl 32399-1050
Jennifer.moore@myfloridalegal.com
Crimapptlh@myfloridalegal.com
(850) 414-3300
(850) 922-6674 (Fax)

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

/s/ Jennifer J. Moore

_____
Jennifer J. Moore
Attorney for State of Florida

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