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IN THE SUPREME COURT OF FLORIDA

WILLIAM R. CREWS

Petitioner,

v. CASE NO. SC14-319

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

REPLY BRIEF OF PETITIONER

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Respondent discusses deposition testimony of several of the complaining witnesses. (Ans. Brf. at 2-3) However, the trial court, in denying the motions to dismiss, pointed only to the facts set out in the sworn motions and traverses. (R195-96)

In its order, the trial court found that defense counsel acknowledged that Crews is a public employee. (R195) A fair reading of the hearing transcript shows that defense counsel admitted no more than that the Second District so held in LaMorte v. State, 984 So. 2d 548 (Fla. 2d DCA 2008). (R330) This is consistent with Crews' reliance, in the motions to dismiss, on the dissenting opinion in LaMorte, in which Judge Altenbernd questioned both whether the inclusion of public employees within section 775.15(12)(b), Florida Statutes (2006), extends to public school teachers and whether the provision gives sufficient notice that they are subject to extended prosecution for "misconduct in office."

ARGUMENT

I. 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, DOES NOT APPLY TO PUBLIC SCHOOL TEACHERS.

If the term "public employee" is a term that needs no construction, the Legislature would not have provided the definitions in section 1012.01, Florida Statutes, which categorizes educational personnel, or chapters 447 and 1002, which concern unions and collective bargaining for state workers. As used in section 775.15(12)(b), which must be construed strictly with any ambiguity resolved in Crews' favor, the term "public employee" is not so clear that looking elsewhere in the statutes to determine its scope is superfluous. Rather than provisions in a chapter titled "Labor Organizations," teachers determining whether they fall under section 775.15(12)(b) would more likely look to section 1012.01, part of a chapter devoted to the qualifications and duties of school system personnel. There they would find that other actors in the school system are labeled "employees" but that the term is not used in describing "classroom teachers." § 1012.01(2)(a).

Section 775.15(12)(b) requires "misconduct in office." Respondent inadvertently demonstrates the flaw in the district court decisions in LaMorte and Crews when it notes that the majorities in those cases did not hold that school teachers hold "offices." (Ans. Brf. at 17) If teachers hold no office, they cannot

commit misconduct in office. Conversely, if "misconduct in office" applies broadly to any offense that occurs while a non-office-holding accused is publicly employed, thousands of Floridians are subject to an extended prosecution period solely because of the identity of their employer. Judges Altenbernd and Padovano correctly concluded that section 775.15(12)(b) does not adequately notify them of their greater exposure.

II. THE EXTENDED STATUTE OF LIMITATIONS FOR AN OFFENSE "BASED UPON MISCONDUCT IN OFFICE," IF APPLICABLE TO PUBLIC SCHOOL TEACHERS, COVERS ONLY THOSE OFFENSES COMMITTED ON SCHOOL PROPERTY OR IN CONNECTION WITH A SCHOOL ACTIVITY.

Respondent acknowledges that a "nexus" between the misconduct and the accused's public service is required. (Ans. Brf. at 18) In the state's formulation, first becoming acquainted in a school setting is nexus enough. (Ans. Brf. at 20) Common experience teaches that teachers and students often first meet at school and learn to recognize one another on sight and perhaps by name. Does this acquaintanceship trigger the extended limitations period for any subsequent misconduct by the teacher involving the student, no matter how attenuated from the school setting or school activities? If the teacher and student were initially acquainted elsewhere, would section 775.15(12)(b) apply simply because the student later attended the school where the teacher worked?

Defining "misconduct in office" requires drawing a line. A criminal law must provide persons of common intelligence reasonable notice if, when, and how the law applies. Brown v. State, 629 So. 2d 841, 842 (Fla. 1994); State v. Winters, 346 So. 2d 991, 993 (Fla. 1977). As a corollary, a criminal law must be construed strictly, with any ambiguity resolved in favor of the accused. § 775.021(1), Fla. Stat. This rule encompasses statutes of limitations. See Reino v. State, 352 So. 2d

853, 860 (Fla. 1977) ("[S}tatutes of limitation in criminal cases are to be construed liberally in favor of the accused."); Ivory v. State, 588 So. 2d 1007, 1008 (Fla. 5th DCA 1991) ("[C]riminal limitation statutes are to be liberally construed in favor of repose."). Accordingly, the line drawn by a criminal statute of limitations must be clearly discernible by those it affects.

Construing "offense based upon misconduct in office" by a teacher to require that the offense occur on school grounds or in connection with a school activity provides the clarity required by due process of law. The line drawn by Respondent is indistinct. It requires only that the accused and complainant became acquainted at school, leading to arbitrary enforcement and ongoing judicial refinement. Nor would Respondent's ephemeral "nexus" supply thousands of teachers, and by extension more thousands of state workers, the notice that persons of ordinary intelligence require for a criminal statute of limitations to satisfy due process.

The motions to dismiss and traverses in this case demonstrate that Crews' offenses did not occur on school grounds or in connection with a school function or activity. Consequently, the extension of the statute of limitations under section 775.15(12)(b) until two years after Crews left state employment does not apply. The trial court erred in denying his motions to dismiss those counts, counts 2-5 and 7-10, which charged crimes outside the unextended three-year statute of limitations

for second- and third-degree felonies in section 775.15(2)(b), Florida Statutes. The First District, in turn, erred in affirming the dismissal.

CERTIFICATES OF SERVICE AND FONT SIZE

I hereby certify that a copy of the foregoing has been furnished via the Florida Courts E-Filing portal to Counsel for Respondent, Jennifer J. Moore, Office of the Attorney General, the Capitol, PL-01, Tallahassee, FL 32399-1050, crimapptlh@myfloridalegal.com, and to Amicus Counsel, William A. Spillias, Florida Education Association, 213 S. Adams St., Tallahassee, FL 32301-1720, will.spillias@floridaea.org, this 17th day of August, 2014. I hereby certify that this brief has been prepared using Times New Roman 14 point font.

Respectfully submitted,

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