IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	:	
Petitioner,	:	
vs.	:	Case No. SC17-1002
DAZARIAN CORDELL LEWARS,	:	
Respondent.	:	
	:	

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

ANSWER BRIEF OF RESPONDENT ON THE MERITS

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TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

This case comes before the Court on discretionary review of Lewars v. State, 42 Fla. L. Weekly D1098 (Fla. 2d DCA May 12, 2017). Following a burglary conviction, the State sought to designate and sentence the Respondent, DAZARIAN CORDELL LEWARS, as a prison releasee reoffender ("PRR"). Lewars agreed burglary was a qualifying offense but argued PRR was inapplicable to him because he had never physically gone to prison. Lewars had previously been sentenced to twenty-four months prison for a violation of probation, but had 766 days of jail credit at sentencing which allowed him to walk out of the Lee County jail rather than out of a Department of Corrections ("DOC") facility. Id. at *1. "[T]here is no dispute that Lewars never actually set foot in a DOC facility before committing the burglary and grand theft." Id. at *2.

The Second District held Lewars did not qualify as a PRR under the plain language of the section 775.082(9)(a)(1), Florida Statutes (2012). The Second District found the statute clear and unambiguous and noted, "[i]n requiring release from a DOC 'facility' – rather than, for example, from DOC 'custody' or simply 'by DOC' – PRR status plainly contemplates release from a physical plant operated by the DOC (or a private vendor)." Id. at

*2.

The Second District recognized three other district courts would have held the opposite. In failing to adopt the reasoning of its sister courts, the Second District concluded the other districts skipped the "plain language" step of the statutory construction analysis. Id. at *4. The Second District concluded the other district courts "impermissibly expanded the plain meaning of the words in the statute-i.e., by conflating the concrete 'facility' with the more nebulous 'custody'- and by impermissibly injecting words-i.e., 'constructive release'-that simply are not there." Id.

Although the State did not argue the absurdity doctrine applied, the Second District rejected its application, finding it "has no role in construing the PRR statute" because multiple rational explanations exist for excluding offenders like Lewars from PRR sentencing. Id. at *5. The Second District surmised the legislature could have excluded offenders like Lewars from PRR because it intended only to punish "those prior offenders who had not been dissuaded by the possibility of extended prison terms despite having already had a sample," or that "enhanced sentencing would have been unwarranted for those like Lewars who had previously been confined for longer than their sentence of imprisonment required." Id. The Second District also noted Judge

Makar's reasoning in State v. Wright, 180 So. 3d 1043, 1048 (Fla. 1st DCA 2015):

> A reasonable person could take the view that offenders released from DOC-operated state prisons are, on average, guilty of more serious crimes such that offenders released from a county facility would not trigger PRR sentencing; or perhaps the Legislature erred on the side of caution, limiting PRR statutes to release from state prisons to avoid potential misclassifications of prisoners released from county facilities. Even if these are anomalous views, they are not wholly unreasonable…

(Makar, J., dissenting). This Court accepted jurisdiction to resolve the conflict between the Second District and the First, Fourth, and Fifth Districts.

SUMMARY OF THE ARGUMENT

The prison releasee reoffender statute is clear and unambiguous. The plain language requires a person to be "released from a state correctional facility operated by the Department of Corrections or a private vendor." This does not include a county jail. In holding otherwise, the other district courts skipped the plain language step of the statutory construction process and instead expanded the plain meaning to include custody of the Department of Corrections or "constructive release" from the Department of Corrections. Likewise, the Petitioner seeks to expand the plain meaning of the statute by inserting the word "sentence" after prison into the statute. The plain language analysis does not lead to absurd results. Lastly, if this Court finds the statute is susceptible to different interpretations, the rule of lenity requires the statute must be construed in favor of the Respondent. The Respondent respectfully requests this Court approve the Second District's opinion in Lewars and disapprove the opinions in Wright, Louzon, and Taylor.

ARGUMENT

ISSUE

A DEFENDANT WHO WAS NOT RELEASED FROM A DEPARTMENT OF CORRECETIONS FACILITY OR A PRIVATE VENDOR FACILITY DOES NOT QUALIFY AS A PRISON RELEASEE REOFFENDER.
(Restated by Respondent.)

Mr. Lewars does not qualify as a prison releasee reoffender because he was not released from a prison, but instead was released from jail. Section 775.082(9), Florida Statutes (2012) is clear and unambiguous in that it requires a defendant to be released from a state correctional facility. Because the plain language is clear and unambiguous, there is no need to resort to resort to other rules of statutory construction.

The Respondent was released from a county jail after being sentenced to twenty-four months state prison but having 766 days of jail credit. Thereafter, within 3 years the Respondent committed burglary, an enumerated offense in section 775.082(9)(a)(1), Florida Statutes (2012). At the sentencing, the State sought to qualify Mr. Lewars as a prison releasee reoffender.

In pertinent part, Section 775.082(9)(a)(1) states: "'Prison releasee reoffender' means any defendant who commits, or attempts to commit: …burglary of a dwelling…within three years after being

released from a state correctional facility operated by the Department of Corrections or a private vendor….” The issue in this case is whether Lewars’ physical release from a county jail from a prison sentence qualifies him as a prison releasee reoffender.

Statutory Interpretation

Statutory interpretation is subject to a de novo standard of review. State v. Hackley, 95 So. 3d 92, 93 (Fla. 2012). “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)(citing Bautista v. State, 863 So. 2d 1180, 1185 (Fla. 2003)).

“The first place we look when construing a statute is to its plain language-if the meaning of the statute is clear and unambiguous, we look no further.” Hackley, 95 So. 3d at 93. “In construing the statute’s plain language, ‘words or phrases in a statute must be construed in accordance with their common and ordinary meaning.’” Lewars at *2(quoting Donato v. Am. Tel. & Tel. Co., 767 So. 2d 1146, 1154 (Fla. 2000)). And “phrases within a statute are not to be read in isolation, but rather should be construed within the context of the entire section.” Id. (quoting Thompson v. State, 695 So. 2d 691, 692 (Fla. 1997). See also Velez v. Miami-Dade Cnty. Police Dep’t, 934 So. 2d 1162, 1164 (Fla.

2006)(citations omitted)("[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning…the statute must be given its plain and obvious meaning."). "We resort to other rules of statutory construction only where the statute is ambiguous in the sense that it could be reasonably understood to mean two different things." Burgess v. State, 198 So. 3d 1151, 1155 (Fla. 2d DCA 2016).

The Statute is Clear and Unambiguous

The Second District recognized the prison releasee reoffender statute is clear and unambiguous. "In requiring release from a DOC "facility"-rather than, for example, from DOC "custody" or simply "by DOC"-PRR status plainly contemplates release from a physical plant operated by the DOC(or a private vendor)." Lewars at *2. Lewars never spent any time in a DOC facility, and under the unambiguous language of the statute, the Second District properly found he did not qualify as a prison releasee reoffender. Id.

The Petitioner does not argue the statute is unclear or ambiguous, but argues the Lewars court limited the statute's reasonable and obvious implications. (Pet'r Br. p. 10) "When faced with an unambiguous statute, the courts of this state are 'without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its

reasonable and obvious implications. To do so would be an abrogation of legislative power.'" State v. Cohen, 696 So. 2d 435, 436 (Fla. 4th DCA 1997)(quoting Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984)).

The Second District has not limited to the statute. Rather, it is the Petitioner who seeks to extend the PRR statute's express terms. Beginning with the Petitioner's issue statement, the Petitioner inserts the word "sentence" after prison: "A Defendant Who Completes a Prior Prison Sentence In A Facility…." Thereafter, Petitioner inserts "sentence" after prison into its entire argument, but prison "sentence" is never in the statute, only prison is. The Lewars court did not limit the statute, it interpreted the plain and ordinary meaning of it. It is the Petitioner's expansion of the statute with the addition of the word "sentence" which is the abrogation of legislative power. Respectfully, without the insertion of "sentence" after prison, the Petitioner's argument fails.

Respondent agrees under the doctrine of in pari materia, a court must "construe related statutes together so that they illuminate each other and are harmonized." Zapo v. Gilreath, 779 So. 2d 651 (Fla. 5th DCA 2001); see also Fla. Dep't of State v. Martin, 916 So. 2d 763, 768 (Fla. 2005)("The doctrine of in pari materia is a principle of statutory construction that requires

that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent."). In this case, the statute read as a whole is harmonized. In section 775.082(9)(a)(1)(d)1, the legislature made clear its intent: "It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law…" The statute includes no mention of release from "custody" or "prison sentence" or "by DOC." Instead, it says prison in two separate places. If the Legislature had intended the statute to say otherwise, it would have. Moreover, the title of the act is Prison Releasee Reoffender Act, and, as evidenced from the title, the entire statute is predicated on the inmate being in prison. "[T]he title of an act is properly considered in determining legislative intent." Larimore v. State, 2 So. 3d 101 (Fla. 2008)(citing Horowitz v. Plantation Gen. Hosp. Ltd. P'ship, 959 So. 2d 176, 182 (Fla. 2007)).

The Petitioner Seeks to Expand the Plain and Ordinary Meaning

The Petitioner argues the Lewars court created a new class of people exempt from the PRR statute because the Legislature did not intend to exempt defendants who were physically released from a prison sentence at a facility that was not operated by the DOC or one of its vendors. But it is the Petitioner who seeks to expand

the plain and ordinary meaning of the statute which centers around prison. The term "state correctional facility" is immediately followed in the statute by "operated by the Department of Corrections or a private vendor," meaning the Legislature contemplated the facility to be a prison, not a county jail operated by the local sheriff. If the Legislature had intended otherwise, it would have explicitly said so. See Lewars at *4 ("The statute specifically identifies the class of offenders to which it applies, and the legislature easily could have employed broader language to include within its reach those offenders who had been released from a county jail facility because the amount of their jail credit exceeded the length of their sentence.").

Moreover, although the Petitioner does not argue the statute is ambiguous, it still urges the Court to resort to the rules of statutory construction in order to examine its legislative intent and purpose. However, only if ambiguity exists should the court look to the rules of construction. State v. Wright, 180 So. 3d 1043 (Fla. 1st DCA 2015)("If, however, an ambiguity exists, a court should look to the rules of statutory construction to help interpret legislative intent, which includes the examination of a statute's legislative history and the purpose behind its enactment.").

The Flawed Reasoning of Wright, Louzon, and Taylor

This is the same flaw in the reasoning of the other district courts, each skipping the "plain language" step of the statutory construction analysis. In Wright, the majority held that Wright's release from custody constituted a "constructive release from the Department of Corrections." 180 So. 3d at 1044-45. In Louzon v. State, 78 So. 3d 678 (Fla. 5th DCA 2012), the Fifth District held Louzon was held in DOC's "legal custody" and therefore "constructively" held in a state prison facility when his sentence expired, and held "[t]o accept Louzon's argument would place form over substance and would be inconsistent with the Legislature's clear intent to provide for a greater sentence for individuals who commit a qualifying offense within three years of completion of a previously imposed prison sentence." Id. at 680-81. In Taylor v. State, 114 So. 3d 355, 356 (Fla. 4th DCA 2013), the Fourth District reasoned that Taylor's "release from federal custody while housed at the county jail still constitutes constructive release from a federal correctional facility for purposes of" the PRR statute.

In finding the other district courts skipped the "plain language" step, the Second District accurately concluded those courts "impermissibly expanded the plain meaning of the words in the statute-i.e., by conflating the concrete 'facility' with the

more nebulous 'custody'- and by impermissibly injecting words- i.e., 'constructive release'-that simply are not there." Lewars at *4. The Second District refused to expand the plain meaning of the words in the statute, citing the well-established principles of statutory construction expressio unius canon and inclusion unius canon:

> Under the expression unius canon … and the interchangeable inclusion unius canon, 'when a law expressly describes the particular situation in which something should apply, an inference must be drawn that what is not included by specific reference was intended to be omitted or excluded.' … The expressio unius canon is thus deployed to defeat an argument that a particular item or matter is included by implication within the scope of a statutory provision.

Id. (quoting State v. Quetglas, 901 So. 2d 360, 363 (Fla. 2d DCA 2005)(citations omitted)).

The Flawed Reasoning of Taylor v. State, No. 2D16-3130 (Fla. 2d DCA Dec. 6, 2017)

The Petitioner adopts the reasoning of Judge Black's concurring opinion in Taylor v. State, No. 2D16-3130 (Fla. 2d DCA Dec. 6, 2017). (Pet'r Br. p. 17-21) Judge Black's reasoning purports to be a plain language assessment of the statutes, however, it is only achieved after stacking several inferences and conclusions. In summary, Judge Black finds that state correctional facilities are synonymous with state correctional institutions,

and that a "state correctional facility operated by the [DOC]" means a prison or "other correctional facility" in which "prisoners are housed…under the custody and jurisdiction of the department." Id. at *2. Judge Black then concludes that a defendant who has been committed to the custody of the DOC is a prisoner such that the building in which he is housed-temporarily or permanently- is a state correctional facility." Id. at *3. Judge Black then concludes that a "county jail qualifies as a state correction institution operated by the DOC once a defendant has been convicted and sentenced such that he is in the custody and under the jurisdiction of the DOC." Id. Judge Black then concludes "these statutes lead to a conclusion that it is a defendant's status as having been committed to the custody of the DOC to serve a prison term, serving that term, and being released from DOC custody within three years of committing the qualifying offense that classifies the defendant as a PRR." Id. at *4. But Judge Black, like the other district courts, is inserting the issue of custody into the statute. Although the adoption of this rational may be attractive from a policy standpoint, it is not the clear and unambiguous meaning of the statute; a clear and unambiguous meaning does not require a lengthy series of stacked inferences and conclusions to explain.

Other Clear and Unambiguous Statutes

In State v. Burris, 875 So. 2d 408 (Fla. 2004), the issue was whether an automobile may be "carried" as a deadly weapon under section 812.13(2)(a) of the robbery statute so as to allow an enhanced conviction. Burris argued an automobile was not an object one would "carry" during the course of committing a crime. The State argued the Legislature "intended to deter robbers from either having or using a deadly weapon and that a restrictive interpretation of 'carry' would circumvent legislative intent." Id. at 412. This Court found "it is not clear that the Legislature's intent to deter the presence of 'firearms or other deadly weapons' during commissions of robberies extends beyond those objects commonly recognized as weapons." Id. at 413. This Court acknowledged it could infer that the Legislature would intend to deter a robber from using an automobile as a weapon, and therefore, the statute should penalize a robber who uses an automobile as a weapon, which was "attractive" from a policy standpoint, but held that would extend the reach of the statute beyond its express language "based solely upon a very broad inference rather than any clear indication of legislative intent." Id. at 414. Recognizing "a statute's plain and ordinary meaning must control unless this leads to an unreasonable result or a result clearly contrary to legislative intent," this Court

refused to expand the statute by extending or modifying its express terms. Id. See also Lopez v. Hall, 43 Fla. L. Weekly S11 (Fla. Jan. 11, 2018)(finding the plain language of the statute made it clear that it supplies a way to sanction a party and its attorney in civil actions for baseless claims or defenses and that it applies to civil proceedings or actions, without exception, which included dating, repeat, and sexual violence injunction proceedings); Browne v. State, No. 5D16-3791 (Fla. 5th DCA Feb. 9, 2018)(finding the detached barrel of a shotgun was not a "deadly weapon" as defined in the case law and standard jury instruction for robbery); English v. State, 191 So. 3d 448 (Fla. 2016)(finding the plain language of section 316.605(1) is clear and unambiguous, and requires that a license plate be plainly visible and legible at all times without regard to whether the obscuring matter is on or external to the plate).

In Davila v. State, 75 So. 3d 192 (Fla. 2011), the issue was whether a parent can lawfully be convicted of kidnapping his own child under section 787.01, Florida Statutes (2000). This Court held the unambiguous language of the statute did not exempt a parent from criminal liability for kidnapping his or her own child. Id. at 196. This Court noted, "that if the Legislature intended to exempt a parent from criminal liability for kidnapping his or her own child, it would have expressly stated so." Id.

The Absurdity Doctrine

The Petitioner maintains the Second District's analysis leads to absurd results by creating a narrow exception to the PRR qualification. "[T]he absurdity doctrine may be used to justify departures from the general rule that courts will apply a statute's plain language." State v. Hackley, 95 So. 3d 92,95 (Fla. 2012). This Court has recognized "a sterile literal interpretation should not be adhered to when it would lead to absurd results." Id. (quoting Maddox v. State, 923 So. 2d 442, 448 (Fla. 2006)).

"But the absurdity doctrine is not to be used as a freewheeling tool for courts to second-guess and supplant the policy judgments made by the Legislature. It has long been recognized that the absurdity doctrine 'is to be applied to override the literal terms of a statute only under rare and exceptional circumstances.'" Id. (quoting Crooks v. Harrelson, 282 U.S. 55, 60 (1930)). The United States Supreme Court "rarely invokes such a test to override unambiguous legislation." Barnhart v. Sigmon Coal Co., 534 U.S. 438, 459 (2002). Moreover, "[t]he absurdity doctrine should be reserved for cases where applying the plain meaning would border on irrationality. Only then can we be sure that a textual interpretation would yield 'an absurd result totally incongruous with the will of the people.'" Maddox, 923 So. 2d at 452 (quoting Plante v. Smathers, 372 So. 2d 933, 937 (Fla.

1979)).

As pointed out by the Second District in its rejection of the absurdity doctrine, multiple rational explanations exist for excluding offenders like Respondent from PRR sentencing. The Second District surmised the legislature could have excluded offenders like Lewars from PRR because it intended only to punish "those prior offenders who had not been dissuaded by the possibility of extended prison terms despite having already had a sample," or that "enhanced sentencing would have been unwarranted for those like Lewars who had previously been confined for longer than their sentence of imprisonment required." Id. The Second District also noted Judge Makar's reasoning in State v. Wright, 180 So. 3d 1043, 1048 (Fla. 1st DCA 2015):

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(Makar, J., dissenting).

The Rule of Lenity Applies

The Legislature has stated that criminal statutes "shall be

strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused." § 775.021(1), Fla. Stat. (2012); see also Brinson v. State, 851 So. 2d 815 (Fla. 2d DCA 2003)("Where the language of a statute is susceptible of differing constructions, the language must be construed most favorably to the defendant.")(citing Thomas v. State, 741 So. 2d 1246 (Fla. 2d DCA 1999)). In this case, if this Court finds "released from a state correctional facility operated by the Department of Corrections or a private vendor" to be susceptible to two different interpretations, then this Court must construe the statute in favor of the Respondent.

CONCLUSION

Based on the foregoing arguments and authorities, the Respondent respectfully requests this Court approve the Second District's opinion in Lewars and disapprove the opinions in Wright, Louzon, and Taylor.

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to the Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this 16th day of March, 2018.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

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