IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

DAZARIAN LEWARS,

Respondent.

Case No. SC2017-1002
L.T. Case No. 2D15-3471

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT OF FLORIDA

JURISDICTIONAL ANSWER BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND THE FACTS

The history and facts are set out in the decision in Lewars v. State, No. 2D15-3471, 2017 WL 1969691 (Fla. 2d DCA May 12, 2017). The opinion was also attached in slip opinion form in the Petitioner's jurisdictional brief.

SUMMARY OF THE ARGUMENT

The Petitioner failed to argue persuasively in its jurisdictional brief why this case is so essential to merit the attention, time, and resources of this Honorable Court. This Court should decline discretionary review because of the simplistic issue of this case; because the Lewars decision is in plain conformity with the Prison Release Reoffender ("PRR") statute and the published legislative intent; because the Petitioner failed to explain why the Lewars decision leads to an absurd result; because there is a quality of fairness and accuracy in the Lewars decision; and because defendants in other districts who are more negatively-impacted by their own District Court of Appeal's opinion may be better situated to litigate this issue.

ARGUMENT

THE COURT SHOULD DECLINE DISCRETIONARY REVIEW OF THE LEWARS DECISION BECAUSE THE PETITIONER FAILED TO PERSUASIVELY ARGUE WHY THE CASE IS ESSENTIAL ENOUGH TO MERIT THE COURT'S ATTENTION.

The bulk of the Petitioner's argument in its jurisdictional brief is that because Second District's holding in Lewars is in express and direct conflict with decisions in the First, Fourth, and Fifth District Courts of Appeal, this Court should exercise its discretionary jurisdiction under article V, section 3(b)(3) of the Florida Constitution.

In Lewars v. State, No. 2D15-3471, 2017 WL 1969691, at *5-6 (Fla. 2d DCA May 12, 2017), the Second DCA thoroughly and accurately explained three other District Courts of Appeal would have reached an opposite result and would have found Mr. Lewars to qualify as a Prison Release Reoffender ("PRR") based on these decisions: State v. Wright, 180 So. 3d 1043 (Fla. 1st DCA 2015); Taylor v State, 114 So. 3d 355 (Fla. 4th DCA 2013); and Louzon v. State, 78 So. 3d 678 (Fla. 5th DCA 2012). The Second DCA declined to follow these decisions because they skip the "plain language" of the statutory-construction analysis. Lewars, 2017 WL 1969691, at *4. The court instead held that Mr. Lewars did not qualify as PRR. Express and direct conflict is clear in this case.

However, this court should judiciously reserve its discretionary power to review only those petitions that are significant enough to merit the Court's limited time, attention, and resources. The Petitioner failed to argue persuasively in its jurisdictional brief that this case is essential enough to be entitled to the attention of this Honorable Court.

The Petitioner attempts to argue that the legislative intent would not be served if the Lewars decision is permitted to pass without review. In making its argument, the Petitioner ignores the actual language of the statute or the legislative intent that was published in the statute at bar. The Lewars decision clearly conforms the statute and to the legislature's published intent, and it is for this reason the issue at bar is too simplistic and straightforward to merit a discretionary review from this Court.

This Court understands that "[t]he first place [judges] look when construing a statute is to its plain language—if the meaning of the statute is clear and unambiguous, [judges] look no further." State v. Hackley, 95 So. 3d 92, 93 (Fla. 2012) (citing Borden v. East–European Ins. Co., 921 So. 2d 587, 595 (Fla. 2006)). Section 775.082(9)(a)1, Florida Statutes (2012), reads in relevant part that a prison release reoffender ("PRR") means any defendant who commits a qualifying offense "within three years after being released from a state correctional facility operated by the Department of Corrections. . . ."

The analysis must end here because "a state correctional facility operated by the Department of Corrections" is not an open-ended statement and contains no ambiguity. It does not allow for confusion and it does not allow for the added possibilities that the Petitioner would like to believe exists. Florida courts must give the statutory language its plain and ordinary meaning—they are not at liberty to add words or meaning that was not enacted by legislature. See McDade v. State, 154 So. 3d 292, 297 (Fla. 2014) (citing Exposito v. State, 891 So. 2d 525, 528 (Fla. 2004)). Further, the legal maxim *Expressio unius est exclusio alterius* requires that laws that expressly describe a particular situation in which something should apply should receive the inference that what is not included by specific reference was intended to be omitted. See Gay v. Singletary, 700 So. 2d 1220, 1221 (Fla. 1997).

However, if this Court were to intellectually explore an extra step in the analysis and look to the legislature's published intent, the issue would again resolve itself. Section 775.082(9)(d)1, Florida Statutes (2012) states clearly that the intent is to punish the "offenders previously released from prison who meet the criteria in paragraph a" of subsection 775.082(9) (emphasis added). In other words, both the law and the published intent are clear for the label "Prisoner Release Reoffender" to be designated to only those individuals who reoffended after being released from a state prison facility operated by the DOC (or a private vendor operating as a state prison for the DOC). If the legislature had intended the PRR

statute to extend to county jails, it could have easily incorporated the appropriate language into the statute.

The Petitioner fails to expressly state in its jurisdictional brief that the result of the Lewars decision is an absurd one. The absurdity doctrine is the only viable path for the Petitioner to circumvent the Petitioner's dilemma with arguing against a clear and unambiguous statute. The doctrine allows for courts to depart from applying the plain meaning of a statute when the literal interpretation would lead to irrationally absurd results. Hackley, 95 So. 3d at 95. If the Petitioner ardently believed its cause was worthy of the Court's time and attention, one would think that the Petitioner would have at the very least expounded upon its only viable argument and explained exactly how the Lewars decision leads to an absurd result.

The result in Lewars is far from absurd because reasonable people could take the view that offenders released from state prisons are, on average, more guilty of more serious crimes. Reasonable people could take the view that legislature intended to prevent PRR from applying to those prisoners released from county facilities. Reasonable people could take the view that legislature wanted to prevent the PRR enhancement from applying to those who had already been confined for longer than their sentence of imprisonment. Lewars, No. 2017 WL 1969691, at *12.

Further, law enforcement agencies still retain their power and discretion to select and transfer jail inmates to DOC-operated facilities if those agencies desire to qualify certain inmates to become PRR just in case those individuals reoffend in the future. The state had the freedom to do this before Lewars; the state retains this freedom following Lewars—its hand is not forced into performing absurd acts by the judicial system.

This Court must remain cautious of imparting too much credibility to an absurdity argument where the result of a literal interpretation is not truly irrational or absurd. "[I]f expanded beyond rational basis review, the absurdity exception would threaten to undermine the separation of powers by allowing judges to substitute their own views of wise public policy for the compromises struck by legislators." Maddox v. State, 923 So. 2d 442, 452 (Fla. 2006) (Cantero, J. dissenting).

The Petitioner continues to argue that the Lewars decision promotes defendants to prolong their cases by staying in county jails, in medical facilities, and in other jurisdictions as long as possible for the alleged purpose of avoiding a PRR sentence enhancement after they are released and then commit their future crimes. The Petitioner's argument is itself absurd. Prisoners are not thoroughly planning to commit future crimes and including the process of being caught, prosecuted, and sentenced as part of their scheme. If anything, prisoners so keenly

intent on committing future crimes will probably be contemplating how they will altogether avoid being caught committing their future crimes. Further, if the Petitioner is correct and prisoners were truly this obsessed with stealthily avoiding PRR designations for their future crimes, the prisoners might realize they could simply wait three years after their release and then commit a crime on the first day of the fourth year after being released.

The Petitioner also fails to argue in its brief why the result in Lewars is an unfair, arbitrary, or inaccurate decision. The Lewars decision is accurate and reasonable because the statute plainly requires previous release from a DOC facility in order to qualify as a prison release reoffender. "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, 2017 WL 1969691, at *2. It would therefore be reasonable to the sentence PRR to only those defendants who reoffended after being released from DOC-operated prison facilities.

The Petitioner argues that permitting a conflict among jurisdictions would implicate equal protection violations. Reasonableness has already been argued throughout this brief and an equal protection challenge like the one Petitioner is alleging would clearly fail. There is no manifest injustice, inaccuracy, or arbitrariness in the Second District’s plain reading of the statute. Additionally, this

appeal may be better-situated for a litigant in another district who was been erroneously sentenced as PRR under the holdings in the First, Fourth, or Fifth DCA.

CONCLUSION

This Court should decline discretionary review because of the simplistic issue of this case; because the Lewars decision is in plain conformity with the Prison Release Reoffender ("PRR") statute and the published legislative intent; because the Petitioner failed to explain why the Lewars decision leads to an absurd result; because there is a quality of fairness and accuracy in the Lewars decision; and because defendants in other districts who are more negatively-impacted by their own District Court of Appeal's opinion may be better situated to litigate this issue. The Respondent thanks the Court for its time and consideration.

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 17th day of July, 2017.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Times New Roman 14-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

/s/ Matthew Overpeck

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