IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

DAZARIAN C. LEWARS,

Respondent.

Case No. SC17-1002

L.T.: 2D15-3471

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

REPLY BRIEF OF PETITIONER

PAMELA JO BONDI
ATTORNEY GENERAL

JOHN KLAWIKOFSKY
CHIEF ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 930997
LISA MARTIN
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 72138
Office of the Attorney General
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa FL 33607-7013
CrimAppTpa@myfloridalegal.com
Lisa.martin@myfloridalegal.com
(813) 287-7900, Fax:(813) 281-5500

COUNSEL FOR PETITIONER

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SUMMARY OF ARGUMENT

The *Lewars* holding is legally unsupportable and defies clearly expressed legislative intent regarding sentencing to the fullest extent of the law. The *Lewars* court exceeded its appropriate judicial function and disregarded the rules of statutory interpretation to create a new class of people exempt from the P.R.R. Act by narrowing the reach of the statute. Since Dazarian Lewars committed an enumerated offense under the PRR statute less than three years after being released from a prison sentence, the trial court correctly sentenced him as a prison releasee reoffender, and the Second District Court of Appeal erred in reversing his sentence.

ARGUMENT

ISSUE: A DEFENDANT WHO COMPLETES A PRIOR PRISON SENTENCE IN A FACILITY OTHER THAN A DEPARTMENT OF CORRECTIONS OR VENDOR FACILITY MAY BE SENTENCED UNDER THE PRISON RELEASEE REOFFENDER ACT FOR A SUBSEQUENT OFFENSE, PROVIDED THE ENUMERATED REQUIREMENTS ARE MET.

Because the *Lewars* Court did not consider the intent and purpose of the PRR Act in its statutory interpretation of § 775.082(9)(a)1, Florida Statutes, its analysis was rendered flawed and incomplete. Respondent argues that the *Lewars* court's statutory interpretation was correct because the court did not need to consider legislative intent during the analysis of the unambiguous statute, and that the absurdity doctrine did not apply to justify a departure from its simplified plain

language analysis. Yet, in direct contradiction to this argument, Respondent argues that the rule of lenity applied because the statute was subject to differing constructions. In other words, Respondent argues that the statute was ambiguous enough to have the rule of lenity apply but not so ambiguous as to require the court to consider legislative intent in determining the meaning of the statute.

Statutory Interpretation

Although Respondent argues that the plain language analysis does not require that § 775.082(9)(a)1 be read "in pari materia" with the entire section, Respondent does concede that "a court's purpose in construing a statute is to give effect to legislative intent", and that, in construing the statute's plain language", "phrases within a statute are not to be read in isolation, but rather should be construed within the context of the entire section." (Respondent's Answer Brief, p. 6) Despite Respondent's argument to the contrary, the *Lewars* court was required to consider its construction of the plain meaning of the statute in pari materia with the other sections of the statute to determine whether its interpretation created inconsistencies within the statute. *See E.A.R. v. State*, 4 So. 3d 614, 629 (Fla. 2009) ("However, if a part of a statute appears to have a clear meaning if considered alone but when given that meaning is inconsistent with other parts of the same statute or others *in pari materia*, the Court will examine the entire act and those *in pari materia* in order to ascertain the overall legislative intent"). The

Lewars court failed to conduct this step in its statutory analysis, and the result was that the *Lewars* court's interpretation is, in fact, inconsistent with the intent, purpose, and the meaning of a "prison releasee reoffender", as defined in § 775.082(9)(a)(2).

Nevertheless, ignoring this Court's precedent, Respondent argues that the *Lewars* court was correct in its statutory analysis, even though the *Lewars* Court did not give effect to legislative intent or read the statute in the context of the entire section. Respondent further argues that the *Lewars* court did not limit the statute's reach, it merely interpreted the plain and ordinary meaning of the statute subsection. This is a circular argument. Of course the *Lewars* court interpreted the statute, but the result of the interpretation was that it limited the statute's reach, which is an impermissible exercise of judicial power where the statute is unambiguous. [1] *State v. Weeks*, 202 So. 3d 1 (Fla. 2016):

> Our guiding principle when construing a statute is to "effectuate the intent of the Legislature." *Borden v. East–European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006). Therefore, "we 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.' " *Velez v. Miami–Dade Cty. Police Dep't*, 934 So. 2d 1162, 1164–65 (Fla. 2006) (quoting *McLaughlin v. State*, 721 So. 2d 1170, 1172 (Fla. 1998)).

[1] No appellate court in Florida has found the PRR statute to be ambiguous.

"[S]tatutory enactments are to be interpreted so as to accomplish rather than defeat their purpose." *Reeves v. State*, 957 So. 2d 625, 629 (Fla. 2007). "Legislature has command of its own language when it enacts laws, and highly regulatory and penal laws ought not to be extended by construction." *Brown v. Watson*, 116 Fla. 56, 62 (Fla. 1934). Simply put, the *Lewars* court failed to interpret § 775.082(9)(a)(1) to accomplish the purpose of the P.R.R. Act, which is "to provide uniform punishment for those crimes made punishable under this section". § 775.082(11). The PRR Act's purpose has always been punishing the enumerated offenses to the maximum extent of the law, and not focused on the prior prison sentence. § 775.082(11), Florida Statutes. This Court should follow its own precedent in ensuring that legislative purpose and intent are honored by reading the statute as a whole and reverse the *Lewars* opinion.

Plain Language Analysis

Judge Anthony K. Black's concurring opinion in *Taylor v. State*, -- So. 3d. --, 42 Fla. L. Weekly D2551a (Fla. 2d DCA December 6, 2017), performed a correct plain language analysis of the PRR statute, recognizing that "it is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole." *Id.* at *4, *citing Fla. Dep't of Children & Family Servs. v. P.E.*, 14 So. 3d 228, 234 (Fla. 2009). That is, "[statutory language] must be taken in context, so that its meaning

may be illuminated in the light of the statutory scheme of which it is a part." *Id*. at *4, *citing O'Hara v. State*, 964 So. 2d 839, 843 (Fla. 2d DCA 2007)

In chapter 97–239, Laws of Florida, which created the PRR Act, the legislature expressly provided for enhanced sentencing "under specified circumstances when the reoffender has been released from correctional custody." *Id*. at *4, *citing* Ch. 97–239, at 4397, Laws of Fla. (emphasis added). Judge Black points out that, while the *Lewars* Court focused on the term "facility", the correct focus should have been on the term of art "state correctional facility", which Legislature has defined as, "any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the [DOC]." *Id*. at *2, § 944.02(8), Fla. Stat. (2016) (emphasis added). Judge Black continued to explain that Legislature has repeatedly emphasized that it is the DOC's legal custody, not the physical location, that is the defining factor for a "prisoner", even those who are "detained in any municipal or county jail". Id., at *3, § 944.02(6); § 944.17(1). Judge Black also analyzed the term "operated by" and reached the same conclusion that it was legal custody, not physical location, that sparked jurisdiction. Id. at *3, 944.171(1), 945.025(3); " *Yisrael v. State*, 993 So. 2d 952, 959 (Fla. 2008) (quoting § 945.04(1), Fla. Stat. (2001)).

Finally, as Judge Black enunciates, the *Lewars* Court's interpretation is contrary to legislative intent and leads to absurd results:

> Applying the statute in such a way improperly excludes those defendants who, like Taylor, were awarded jail credit amounting to time-served on a prison sentence; those who were transferred to a facility awaiting postconviction hearings; those who were temporarily detained in a prison; or those who were transferred to another facility for medical care or to county jail to face unrelated charges. Such an interpretation is at odds with the express statutory language requiring more severe punishment for reoffenders who were released from correctional custody within three years of commission of their latest offenses.

Taylor v. State, -- So. 3d. --, 42 Fla. L. Weekly D2551a, *4 (Fla. 2d DCA December 6, 2017) (footnotes omitted).

Respondent argues that Judge Black and the First, Fourth and Fifth District Courts of Appeal incorrectly considered "custody" when interpreting the § 775.082(9)(a)1 [Respondent's Answer Brief, p. 13]:

> within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor or within 3 years after being released from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

§775.082(9)(a)1, Florida Statutes. However, the entire focus of the challenged subsection concerns release from custody. Custody is central to both the *Lewars* court's analysis and Judge Black and the First, Fourth and Fifth District Courts of Appeal's analyses: the *Lewars* court focuses on physical custody and Judge Black and the First, Fourth and Fifth District Courts of Appeal correctly focus on the legal custody which creates the DOC jurisdiction enunciated in the Florida Statutes. There is no way to interpret the statute without taking "custody" into consideration. In fact, Respondent's argument brings to light yet another *absurd* result: if the key concern is physical location in a state prison, as Respondent and the *Lewars* court suggest, and not legal custody based on a prison sentence, then anyone physically present in a DOC prison facility may fall under the PRR statute's purview, even if they are serving a jail sentence while being housed in a DOC facility, for some reason (like safety reasons, keep-away order, or detainer etc.).

Absurdity Doctrine

Respondent argues that the *Lewars* court's interpretation does not lead to absurd results. This Court has determined that "a sterile literal interpretation should not be adhered to when it would lead to absurd results." *Maddox v. State*, 923 So. 2d 442, 448 (Fla. 2006). However, this is precisely what the Second DCA has done: it took a "sterile literal" interpretation of §775.082(9)(a)1, without regard for the

unambiguous legislative intent, and created an interpretation that leads to absurd results.

The Fifth District Court of Appeal, in *Louzon v. State*, 78 So.3d 678 (Fla. 5th DCA 2012), astutely pointed out that interpreting the PRR statute to require physically transporting a person to DOC just to ensure release from a physical DOC facility would be an absurd result. Respondent argues that the *Lewars* Court's correctly rejected the absurdity doctrine argument which was posited by the *Louzon* court because "multiple rational explanations exist for excluding offenders like Respondent from PRR sentencing". (Respondent's Answer brief, p. 17) As Respondent points out, the *Lewars* court cited Judge Makar's dissent in *Wright*, which suggested that the offenders who are released from prison sentences while in a prison facility commit more serious offenses. *Id*. The *Lewars* court further proclaimed that the absurdity doctrine played no role in construing the PRR statute:

> Multiple rational explanations exist for excluding offenders like Lewars from PRR sentencing. As Lewars argued below, the legislature reasonably could have excluded offenders like him from PRR status because it intended only to punish, and to protect society from, those prior offenders who had not been dissuaded by the possibility of extended prison terms despite having already had a sample.
>
> …
>
> Or the legislature could have reasoned that enhanced sentencing would have been unwarranted for those like Lewars who had previously been confined for longer than their sentence of imprisonment required.

However, the absurdity doctrine *should have* played a role. "It is fundamental that a statute should be given a reasonable interpretation" and "[i]n statutory construction legislative intent is the polestar by which we must be guided, and no literal interpretation should be given that lends to an unreasonable or ridiculous conclusion or a purpose not designated by the legislature." *State v. Sullivan*, 95 Fla. 191, 116 So. 255 (1928); *Johnson v. Presbyterian Homes of Synod of Fla., Inc*., 239 So. 2d 256, 263 (Fla. 1970). The *Lewars* court's reasons for rejecting the absurdity doctrine are not reasonable given the unambiguous legislative intent to punish offenders to the fullest extent of the law. *See* § 775.082(9)(d) 1., Fla. Stat. (2002)"; *Cotto v. State*, 139 So. 3d 283, 289 (Fla. 2014). This court in *Grant*, recognized that it was the prison "*sentence*", not the *transport* to prison that the *Lewars* court focused upon, that qualifies an offender for PRR sentencing: "[t]he Legislature indicated that the Act was enacted both because 'the people of this state and the millions of people who visit our state deserve public safety and protection from violent felony offenders who have previously been *sentenced to prison* and who continue to prey on society by reoffending,' and because 'the Legislature finds that the best deterrent to prevent prison releasees from committing future crimes is to require that any releasee who commits new serious felonies must be sentenced to the maximum term of incarceration allowed by law, and must serve 100 percent of the court-imposed

sentence.' Chapter 97–239, Laws of Florida". *Grant v. State,* 770 So. 2d 655, 662 (Fla. 2000) (emphasis supplied).

The argument that the legislature could have intended to exempt people who received time served because they were not physically transported to a prison facility is wholly unreasonable, despite the *Lewars* court's and Judge Makar's *Wright* arguments to the contrary. Whether someone ends the same length of prison sentence for some offense in a county jail or a state facility does not matter- he serves an equal amount of time on the prison sentence regardless of the location or seriousness of the offenses. Another significant consideration in whether a prisoner is transported to prison is the delay in the resolution of the case- again, regardless of the seriousness of the offense. One example would be that someone who is sent to Chattahoochee to get his competency restored can receive years of credit for time served compared to someone who takes a plea at arraignment. Moreover, the *Lewars* court's idea that legislature *could* have meant to exempt those who do not get a "sample" of prison because they were not transported is not consistent with the other sections of the PRR statute; including the purpose and intent, but most specifically, § 775.082(9)(a)(2) (emphasis supplied):

> "Prison releasee reoffender" also means any defendant who commits or attempts to commit any offense listed in sub-subparagraphs (a)1.a.-r. while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor or while the defendant was

> on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, <u>following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.</u>

Legislature makes it clear that what is important about the prior prison sentence is that it is a crime punishable by more than one year: it is not important where the offender resided when he was released from that sentence. As mentioned in the State's initial brief, and by Judge Black in *Taylor*, there are many types of offenders who get sentenced, or resentenced, and are physically released from a county facility after lengthy prison sentences, including very "serious" offenses. The *Lewars* court's argument, that the legislature *could* have thought to exempt someone released from the county jail because they *may* have had a less serious offense, *may* not have "sample[d]" prison, or served more time than his sentence required, is rudimentary and myopic. The idea that, because someone gets physically released from a county facility rather than a state facility, he is a less serious offender is devoid of reason: there is not always a correlation between where the prisoner spends his last day of his prison sentence and the seriousness of his offenses.

The *Lewars* court inserts its supposition for hypothetical legislative intent. However, this is an inappropriate exercise of judicial power as the legislature's intent in enacting the PRR Act is unambiguous. *See Cotto v. State*, 139 So. 3d 283, 289-90

(Fla. 2014) ("[b]ased on this unambiguous expression of legislative intent in the PRR statute"). Had legislature *actually* intended on exempting anyone based on prior prison sentence, those exemptions would have been explicitly written into the statute. As Respondent cites in his brief, this Court in *Davila v. State*, 75 So. 3d 192, 196 (Fla. 2011), clearly proclaimed that, "It is our view that if the Legislature intended to exempt […], it would have expressly stated so." Therefore, if Legislature wanted to create an exemption for those offenders who received a prison sentence but did not physically complete that sentence in a facility operated by DOC, they would have specifically written into the statute an express exemption for those offenders. However, no such exemption exists. Moreover, had the Legislature intended to create an exemption to the PRR statute, the law requires that Legislature write such an exemption narrowly so it would be no broader than the express purpose of the exemption. *See Halifax Hosp. Medical Center v. News-Journal Corp*., 724 So. 2d 567, 570 (Fla. 1999):

> Moreover, in enacting exemptions […] the legislature has an express constitutional obligation to tailor such an exemption so that it is no broader than necessary to accomplish the exemption's stated purpose. Thus, the task of enacting a more limited statutory exemption appropriately belongs to the legislature in this case.

Respondent also cites *State v. Burris*, 875 So. 2d 408 (Fla. 2004), as support. However, this is another case that supports the State's position. This Court in *Burris*

determined that it would not extend the statute "based solely upon a very broad inference rather than any clear indication of legislative intent." Here, we have clear legislative intent which is contrary to the *Lewars* court's interpretation. The *Lewars* court should not have ignored Legislature's intent to "punish those eligible for PRR sentencing to *the fullest extent of the law." Cotto,* 139 So. 3d at 289. The Legislature made a clear statement/indication that did not intend to have the courts infer exemptions for offenders who commit the offenses punishable under the act because they expressly stated they wanted those offenders punished to the maximum extent of the law. Finally, the focus of the PRR statute was never the prior sentence: it was always the current *violent* offense for which the defendant committed after release from a prior prison sentence, on *any* offense, regardless of seriousness of that offense. *See* § 775.082(11), Florida Statutes.

Rule of Lenity

Throughout his brief, Respondent argues that the PRR statute is unambiguous so statutory construction rules do not apply; however, his last argument is that the PRR statute is ambiguous *enough* that the rule of lenity should apply. Respondent argues that the rule of lenity applies in this case because there are differing constructions of the challenged statute subsection. (Respondent's Answer Brief, p. 28) However, this is not the complete and correct rule of law: both of the differing constructions must also be reasonable. *Crews v. State*, 183 So. 3d 329, 333 (Fla.

2016). The *Lewars* court's construction is not reasonable because it is contrary to legislative intent and, also, because it leads to *multiple* absurd results, as discussed in the initial brief and the section above.

"[T]he fact that appellate courts may differ with regard to the application of statutory provisions does not necessarily render a statute ambiguous." *Taylor*, *supra*, 42 Fla. L. Weekly D2551a n. 3, *citing Nettles v. State*, 850 So.2d 487, 495 (Fla. 2003). The correct statement of law is that the rule of lenity only applies where "the language and the purpose of the statute did not indicate a clear legislative intent". *Bautista v. State*, 863 So. 2d 1180, 1185 (Fla. 2003) (emphasis supplied); *see also Wallace v. State*, 724 So. 2d 1176 (Fla. 1998) ("Because the meaning of the statute could not be discerned from the wording of the statute or its legislative history, the Court construed the statute in favor of the accused individual") (emphasis supplied). The rule of lenity does not apply here because this Court has already determined that, "[b]ased on this unambiguous expression of legislative intent in the PRR statute", the legislative intent in enacting the PRR statute "is to provide for *maximum sentencing* within the sentencing statute." *Cotto v. State*, 139 So. 3d 283, 289-90 (Fla. 2014) (emphasis in original and supplied). Since legislative intent is unambiguous, the rule of lenity does not apply.

CONCLUSION

The *Lewars* court abrogated the lawmaking power entrusted to the Legislature by interpreting § 775.082(9)(a)1, Florida Statutes, in a way that redefines the class of people affected by the statute. The court failed to conduct the correct legal analysis to interpret the plain meaning of the § 775.082(9)(a)1, by failing to read the statute in concert with the other paragraphs of the section, and for ignoring legislative purpose and intent in enacting the PRR Act. Additionally, the *Lewars* court ignored the differences between legal and physical custody as Lewars was legally released by D.O.C. even though he was physically present in a county facility. The *Lewars* court's interpretation leads to absurd results which cannot be reconciled with legislative intent or constitutional protections. Finally, the legislative intent in enacting the PRR statute is unambiguous, and the *Lewars* court did not formulate a reasonable construction thereof which would require the rule of lenity to be applied. Based on the foregoing discussions, the State respectfully requests this Honorable Court quash *Lewars* and approve the decisions in the First, Fourth and Fifth District Courts of Appeal.

CERTIFICATE OF SERVICE

I certify that a copy of this brief has been furnished to the following electronically via the Florida Courts e-filing portal on April 5, 2018: Maureen Surber, Assistant Public Defender, at msurber@pd10.org;

appealfilings@pd10.state.fl.us, Office of the Public Defender, P.O. Box 9000 -- Drawer PD, Bartow, Florida 33831.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Times New Roman 14-point font.

Respectfully submitted and certified,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ John Klawikofsky
JOHN KLAWIKOFSKY
CHIEF ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 930997

/s/ Lisa Martin
LISA MARTIN
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 72138
Office of the Attorney General
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa FL 33607-7013
CrimAppTpa@myfloridalegal.com
Lisa.martin@myfloridalegal.com
(813)287-7900, Fax:(813)281-5500

COUNSEL FOR PETITIONER