

IN THE SUPREME COURT OF FLORIDA,

STATE OF FLORIDA,

CASE NO. 1999-27

Petitioner,

LT Case No. 98-3949

v.

STANLEY V. HUGGINS,

Respondent.

ON DISCRETIONARY REVIEW FROM THE FOURTH DISTRICT COURT OF
APPEAL

PETITIONER'S SUPPLEMENTAL BRIEF ON THE MERITS

ROBERT BUTTERWORTH
ATTORNEY GENERAL
Tallahassee, Florida
CELIA TERENZIO
BUREAU CHIEF, WEST PALM BEACH
Florida Bar No. 0656879
DANIEL P. HYNDMAN
Florida Bar No. 0814113
Assistant Attorney Generals
Florida Bar No.: 0814113
1655 Palm Beach Lakes Blvd
Suite 300
West Palm Beach, FL 33401
(561) 688-7759

Counsel for Petitioner

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PRELIMINARY STATEMENT

This supplemental brief is submitted pursuant to an Order of this Court issued October 1, 2001, directing the parties to address the question:

What effect does the recent amendment to section 775.082, Florida Statutes, have on this case, in light of the fact that the amendment was passed before the case construing the statute became final?

Petitioner, the State of Florida, was the prosecution in the trial court and Appellant in the Fourth District Court of Appeal. Petitioner will be referred to herein as "the Petitioner" or "the state". Respondent, Stanley V. Huggins, was the defendant in the trial court and Appellee in the Fourth District Court of Appeal. He will be referred to as "the Respondent".

The symbol "T" refers to the transcript of the hearing held in the trial court on November 2, 1998.

The amendments to Senate Bill 676 and House Bill 1465 are available on "Online Sunshine", <http://www.leg.state.fl.us>.

STATEMENT OF THE CASE AND FACTS

The Respondent plead guilty to the trial court for burglary of a dwelling (T 5). The victim was away from his residence, at work, at the time of the burglary (T 8). A neighbor called the victim at work to report the crime and the victim called the sheriff's office (T 8). The victim returned to his residence before the sheriff's deputy responded (T 8).

The Petitioner, State of Florida, sought to have the Respondent classified as a Prison Releasee Reoffender (T 2-3). The trial court believed that it could not sentence the Respondent as a Prison Releasee Reoffender because the dwelling was not "occupied" at the time of the offense(T 2-3). The Petitioner objected and argued that burglary of a dwelling - whether the dwelling was occupied or not - fell under the Prison Releasee Reoffender Act ("PRRA") (T 3-4). The Respondent was adjudicated guilty and sentenced to 55 months in the Department of Corrections (T 27).

The Petitioner appealed to the Fourth District Court of Appeal, which affirmed the order of the trial court. State v. Huggins, 744 So. 2d 1215 (Fla. 4th DCA 1999).

On March 22, 2001, this Court, in a 4-2 decision (Pariente, J., recused), affirmed the decision of the Fourth District Court of Appeal, finding that the PRRA, section 775.082(8), Florida

Statutes (1997), was not applicable to a defendant who is convicted of burglary of an unoccupied dwelling. State v. Huggins, 26 Fla. L. Weekly S174 (Fla. March 22, 2001). The Petitioner filed a motion for rehearing on April 6, 2001, to which the Respondent filed a reply. This motion is pending in this Court.

On June 15, 2001, before the instant case became final, section 775.082, Florida Statutes, was amended; specifically, section 775.082(9)(a)1 q, Florida Statutes (2000) was amended from:

"Prison releasee reoffender" means any defendant who commits, or attempts to commit:

* * *

Burglary of an occupied structure or dwelling;

to:

"Prison releasee reoffender" means any defendant who commits, or attempts to commit:

* * *

Burglary of a dwelling or burglary of an occupied structure;

Laws of Florida, ch. 2001-239.

This Court then ordered supplemental briefs.

SUMMARY ARGUMENT

The recent amendment to section 775.082, Florida Statutes, clearly demonstrates that the Legislature disagrees with this Court's interpretation of the Prison Release Reoffender Act ("PRRA"). The Petitioner respectfully submits that this Court should revise its opinion in the instant case to reflect the Legislature's intent. Since the amendment is a clarifying amendment, rather than a substantive change in the law, this Court should revise its construction of the PRRA to find that it applies to burglary of a dwelling regardless of occupancy. This construction should also apply to the prior statute since it is well-settled that subsequent legislation adopted to clarify the Legislature's intention should be considered when construing the prior statute; consequently, it applies to the Respondent. Accordingly, the decision of the Fourth District Court of Appeal should be reversed.

ARGUMENT

THE RECENT AMENDMENT TO SECTION 775.082, FLORIDA STATUTES, WHICH WAS PASSED BEFORE THIS CASE BECAME FINAL, CLEARLY INDICATES THAT THE LEGISLATURE INTENDED THAT THE PRISON RELEASEE REOFFENDER ACT APPLY TO BURGLARY OF A DWELLING WHETHER OR NOT THE DWELLING IS OCCUPIED; THIS COURT SHOULD REVISE ITS CONSTRUCTION OF THE PRIOR STATUTE CONSISTENT WITH THE LEGISLATURE'S INTENT

In its decision in State v. Huggins, 26 Fla. L. Weekly S174 (Fla. March 22, 2001), a majority of this Court found section 775.082(8), Florida Statutes (1997), to be ambiguous and affirmed the Fourth District Court of Appeal's holding that "the Prison Releasee Reoffender Act is not applicable to a defendant who is convicted of burglary of an unoccupied dwelling." Id. The majority rejected the State's position that the Legislature intended the Prison Releasee Reoffender Act ("PRRA") to apply to those convicted of burglary of a dwelling whether or not the dwelling was occupied. Id.

After Huggins was reported, but before it became final¹, the Legislature amended the applicable language of section 775.082,

¹The Petitioner's motion for rehearing is pending. "Opinions of appellate courts are not final until the time for rehearing and the disposition thereof, if any, has run." Henderson v. State, 679 So. 2d 805, 808 fn. 1 (Fla. 3d DCA 1996).

Florida Statutes, construed by this Court in the instant case. Pursuant to this amendment, section 775.082(9)(a)1 q, Florida Statutes (2000), which previously read:

"Prison releasee reoffender" means any defendant who commits, or attempts to commit:

* * *

Burglary of an occupied structure or dwelling;

was amended to read:

"Prison releasee reoffender" means any defendant who commits, or attempts to commit:

* * *

Burglary of a dwelling or burglary of an occupied structure;

Laws of Florida, Ch. 2001-239.

This amendment to section 775.082 is a clear indication that the Legislature has rejected this Court's interpretation of the section; the Legislature has made it clear that the PRRA applies to those who commit burglary of a dwelling regardless of the occupancy of the dwelling. This Court should review its decision in light of this amendment and interpret the prior statute consistent with the Legislature's intent as clarified by the amendment. "Florida case law is well established that subsequent legislation adopted to clarify the legislature's intention is properly considered in construing a prior statute." State v. Nuckolls, 606 So. 2d 1205, 1206 (Fla. 5th DCA 1992).

This Court has held that courts have the "right and duty,

in arriving at the correct meaning of a prior statute, to consider subsequent legislation." Parker v. State, 406 So. 2d 1089, 1092 (Fla. 1981). See also, Ivey v. Chicago Insurance Company, 410 So. 2d 494 (Fla. 1982). When a statutory amendment is intended to clarify a statute rather than to enact a change in law, it is well-settled that courts should view this legislative change as an expression of the Legislature's original intent:

[A] court may consider an amendment to a statute soon after controversies as to the interpretation of the original act arise as legislative interpretation of the original law. Such subsequent amendments to a statute, which serve to clarify rather than change existing law, are entitled to substantial weight in construing the earlier law.

Matthews v. State, 760 So. 2d 1148, 1150 (Fla. 5th DCA 2000) (emphasis added).

On April 3, 2001, only twelve days after Huggins was reported, the Legislature took action to clarify their intention as to the applicability of the PRRA. On that date, Senator Smith proposed to amend the applicable language of section 775.082 from "Burglary of an occupied structure or dwelling" to "Burglary of a dwelling or burglary of an occupied structure." Senate Bill No. 676, Amendment ID # 215040. The House of Representatives proposed the same amendment the following day,

April 4, 2001. House Bill No. 1465, Amendment ID # 495827. The Senate Bill passed unanimously on April 11, 2001 and the House Bill passed unanimously on May 4, 2001. Senate Bill 676, Vote History². The Act was approved by the Governor on June 15, 2001. Laws of Florida, ch. 2001-239.

This nearly instantaneous reaction to the Huggins decision makes it clear that the Legislature intended that the prior version of the PRRA be applied to burglary of a dwelling regardless of occupancy. The amendment to section 775.082 "clarifies that the definition of prison releasee reoffender includes specified individuals who commit burglary of an occupied structure or burglary of a dwelling, *regardless of whether the dwelling was occupied at the time.*" House of Representatives Committee on Crime Prevention, Correction, and Safety, Final Analysis (June 27, 2001)(emphasis in original).

It is notable that the Committee refers to this amendment as a clarification of the statute. Accordingly, this Court should give substantial weight to this amendment. See, Matthews, 760 So. 2d at 1150. This subsequent amendment to the PRRA is an "invaluable tool" in this Court's determination of the

²In addition to the amendment to section 775.082(9)(a)1 q, two other amendments were made to section 775.082. Laws of Florida, ch. 2001-239. However, these amendments are not relevant to the instant case.

Legislature's intent as to the applicability of the PRRA to burglary of dwelling, regardless of occupancy, even prior to the amendment. See Ivey, 410 So. 2d at 497. Since the Legislature, with the recent amendment, has provided this Court with a valuable tool to determine its original intent, it is respectfully submitted that this Court revise its opinion to reflect the Legislature's intent and find that the prior version of the PRRA applies to burglary of any dwelling, whether occupied or not.

This Court has held that "courts may consider subsequent legislation to determine the intended result of a previously enacted statute", particularly if there has been legislative action in response to a judicial interpretation of a law which the Legislature believes is contrary to its original intent. See, Palma Del Mar Condominium Association No. 5 of St. Petersburg, Inc. v. Commercial Laundries of West Florida, Inc., 586 So. 2d 315, 317 (Fla. 1991). This is precisely the situation in the instant case. The Legislature here clearly, and unanimously, believed that this Court's interpretation of the applicability of the PRRA, as announced in Huggins, was contrary to its original intent and took immediate action in response to that decision to clarify its intention. Since "[i]t is a fundamental rule of statutory construction that legislative

intent is the polestar by which the court must be guided", State v. Webb, 398 So. 2d 820, 824 (Fla. 1981), the Respondent respectfully submits that this Court revise its opinion in light of the recent clarifying amendment to section 775.082 and construe the prior version of the PRRA consistent with the Legislature's intention that the PRRA be applied to those who are convicted of burglary of a dwelling regardless of the occupancy of the dwelling. Accordingly, the decision of the Fourth District Court of Appeal should be reversed.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, and in its other pleadings, the Petitioner respectfully requests this Honorable Court to reverse the decision of the lower court.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL
Tallahassee, Florida

CELIA TERENCE
Assistant Attorney General
Bureau Chief
Florida Bar No.: 0656879

DANIEL P. HYNDMAN
Assistant Attorney General
Florida Bar No.: 0814113
1655 Palm Beach Lakes Blvd
Suite 300
West Palm Beach, FL 33401
(561) 688-7759

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of hereof has been furnished by U.S. Mail or Courier to: Karen E. Ehrlich, Assistant Public Defender, 421 3rd Street, 6th Floor, West Palm Beach, FL 33401 on October 15, 2001.

CELIA TERENCE
Assistant Attorney General
Bureau Chief

DANIEL P. HYNDMAN
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

Counsel for the State of Florida, Petitioner herein, hereby certifies that the instant brief has been prepared with Courier New 12-point font and complies with the requirements of Rule 9.210, Fla. R. App. P.

DANIEL P. HYNDMAN
Assistant Attorney General