

IN THE SUPREME COURT OF FLORIDA

THOMAS ABRAMS,

CASE NO. SC08-220

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

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

STATEMENT OF THE CASE AND FACTS

The statement of the case and relevant facts as they appear in the opinion of the Fourth District is as follows:

Abrams appeals two life sentences¹ imposed upon him pursuant to the Dangerous Sexual Felony Offender Act ("DSFO Act"), section 794.0115, Florida Statutes (2004). He argues that the act is facially unconstitutional as it violates procedural due process. We hold that the act does not violate procedural due process, and the state provided proof of qualifying convictions for its application to Abrams on his conviction for lewd and lascivious battery. ... Abrams's counsel made a vague due process objection to the constitutionality of the statute without much argument. The court sentenced Abrams in accordance with the DSFO Act to two concurrent life terms. He also filed a rule 3.800(b)(2) motion challenging his sentence and the statute's constitutionality, which the trial court denied. Abrams appeals. ... Abrams argues that the DSFO Act is unconstitutional on its face because it provides no statutory notice, no separate hearing, and no standard of proof. ... Abrams contends that the statute does not provide written notice of its application. However, "publication in the Laws of Florida or the Florida Statutes gives all citizens constructive notice of the consequences of

¹On appeal the State conceded that the one count did not qualify for sentencing pursuant to the statute.

their actions." ... The supreme court has also rejected this same notice argument when raised against the prison releasee reoffender statute, which also does not require written notice. ... The sentencing hearing satisfies Abrams's due process opportunity to be heard on his DSFO sentence.

Although the DSFO Act does not provide a standard of proof, we see no impediment to its constitutionality for this omission, which may be supplied by case law.

Abrams v. State, 971 So. 2d 1033 (Fla. 4th DCA 2008)

SUMMARY ARGUMENT

This Court should decline to accept jurisdiction in the instant case even though there may be a basis for jurisdiction. In the case below the Fourth District Court of Appeal found the Dangerous Sexual Felony Offender Act "does not violate procedural due process." However, the Petitioner has not shown a compelling need for such review; the decision of the Fourth District was the result of a plain reading of the clear language of the applicable statute and a reasonable application of well established law to the statute. This court should decline to accept jurisdiction.

ARGUMENT

THIS COURT SHOULD DECLINE JURISDICTION; THE
ONLY BASIS FOR DISCRETIONARY REVIEW IS THE
FOURTH DISTRICT'S DECLARATION OF THE
VALIDITY OF THE DANGEROUS SEXUAL FELONY ACT

The Petitioner seeks to invoke the discretionary jurisdiction of this Court to review the decision of the Fourth District pursuant Article V, section 3(b)(3), Florida Constitution². In its opinion the Fourth District Court of Appeal held that the Dangerous Sexual Felony Offender Act ("DSFO Act"), section 794.0115, Florida Statutes (2004) "does not violate procedural due process." Abrams v. State, 971 So. 2d 1033 (Fla. 4th DCA 2008). Although there may be a basis for review, for the reasons argued below, this Court should decline to exercise its discretionary jurisdiction in the instant case.

The Decision of the Fourth District

In the instant appeal, Abrams v. State, 971 So. 2d 1033 (Fla. 4th DCA 2008), the Petitioner - who was sentenced pursuant

²This court "may review any decision of a district court of appeal that expressly declares valid a state statute."

to the Dangerous Sexual Felony Offender Act - asserted in a motion filed by appellate counsel pursuant to Fla. R. Crim. P. 3.800(b)(2) that the DSFO Act was "unconstitutional on its face because it provides no statutory notice, no separate hearing, and no standard of proof." The Fourth District rejected the Petitioner's argument and held that "the act does not violate procedural due process..." Abrams v. State, 971 So. 2d 1033 (Fla. 4th DCA 2008). In its discussion of the issue the Fourth District Court of Appeal noted that, "The section of the DSFO Act of which Abrams complains provides for mandatory sentencing based upon the nature of a defendant's current conviction and his prior record." The court noted that the DSFO Act was different from the habitual offender statute. Under the habitual offender statute there is a specific written notice requirement and the trial judge can exercise some discretion in sentencing - things not found in the DSFO Act. The Fourth District Court of Appeal concluded that publication of the statute in the Florida Statutes provides constructive notice to all citizens and the Rules of Criminal Procedure clearly gives the defendant notice and an opportunity to be heard prior to sentencing.

Basis for Discretionary Review

Pursuant to Article V, section 3(b)(3) of the Florida Constitution, this Court “[m]ay review any decision of a district court of appeal that expressly declares valid a state statute. . .” See also, Rule 9.030(a)(2)(A)(i), Fla. R. App. P. Since the Fourth District held that the Dangerous Sexual Felony Offender Act does not violate procedural due process, there may be a basis for discretionary review. However, the Respondent would request that this Court decline to exercise its jurisdiction in the instant case since the decision of the Fourth District was based on the application of well established law to the particulars of this statute. For example, the Fourth District Court of Appeal read the plain words of the statute and determined the statute contained no written notice requirement-similar to the Prison Releasee Reoffender statute which this court reviewed and upheld in Speed v. State, 779 So. 2d 265 (Fla. 2001). The Fourth District pointed out that notice of the applicability of the statute is provided through publication in the Laws of Florida as was previously noted by this court in State v. Beasley, 580 So. 2d 139, 142 (Fla. 1991). The Fourth District also pointed out that petitioner was afforded due process as petitioner had notice and

an opportunity to heard and contest the validity of any prior conviction before sentence was imposed in a hearing required by Fla. R. Crim. P. 3.720. Finally, the district court found that a statute does not have to specify a standard of proof regarding the prior conviction to be constitutional and that case law can provide the required standard of proof.

Therefore, although there may be a basis for discretionary review, the Respondent would request that this Court decline review. The Petitioner has not shown a compelling need for review by this Court since the decision of the Fourth District was based on a reading of the clear language of the statute and an reasonable application of the well-established case law interpreting similar sentencing statutes.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, the Respondent respectfully requests this Honorable Court to decline to exercise its jurisdiction to hear this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of hereof has been furnished by courier to: Anthony Calvello, Assistant Public Defender, 421 Third Street, 6th Floor, West Palm Beach, FL 33401, on February ____, 2008.

DON M. ROGERS
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared with Courier
New 12 point type and complies with the font requirements of
Rule 9.210.

Of Counsel