DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

STATE OF FLORIDA,
Appellant,

v.

LETIVA WILLIAMS,
Appellee.

No. 4D08-361

[November 19, 2008]

MAY, J.

The State appeals the defendant's sentence. It argues that the trial court erred in finding that the defendant's conviction on a felony battery charge did not satisfy the catch-all provision for prison releasee reoffender (PRR) sentencing. We agree and reverse.

The State charged the defendant with felony petit theft; felony battery causing great bodily harm, permanent disability or disfigurement; and use of an anti-shoplifting control device counter measure. The Information alleged the defendant had caused great bodily harm, permanent disability or permanent disfigurement by biting the victim on the shoulder and arm causing lacerations requiring emergency medical treatment. The State gave notice of its intent to seek habitual felony offender (HFO) and PRR sentences.

The defendant entered a plea of no contest. At sentencing, the State requested the court to sentence the defendant on the felony battery charge as both an HFO and a PRR. Defense counsel argued that the defendant did not qualify as a PRR. The trial court initially rejected the defendant's argument, but then changed its ruling based upon the last two paragraphs of our opinion in *Spradlin v. State*, 967 So.2d 376 (Fla. 4th DCA 2007).

On appeal, the State argues that the facts of this case, the defendant's biting the victim and causing the need for emergency medical attention, are sufficient to establish the requisite violence for imposition of a PRR

sentence for the felony battery charge under the catch-all provision of section 775.082(9)(a)1.(o), Florida Statutes (2005). That provision provides for a PRR sentence for "[a]ny felony that involves the use or threat of physical force or violence against an individual." § 775.082(9)(a)1.(o). We agree with the State.

In *Spradlin*, we addressed whether a second offense of misdemeanor battery qualified for PRR sentencing. The defendant had been convicted of felony battery based upon multiple simple battery charges under section 784.03(2), Florida Statutes (2006). We held that because a felony battery does not always involve physical force or violence, the charge does not automatically qualify for PRR sentencing. We then concluded with the following sentence.

> Because felony battery is not one of the enumerated batteries in the forcible felony statute, it is not one of the specific offenses for which a defendant can be made to suffer the enhanced punishments of a PRR.

Id. at 378. It was this language that understandably caused the trial court to reach its conclusion.

That sentence however was unnecessary to the holding in *Spradlin*. It was not meant to be a broad generalized statement that no felony battery can ever qualify for imposition of a PRR sentence. Certainly, that will depend on the facts of the case.

Here, the defendant was adjudicated guilty of felony battery under section 784.041, Florida Statutes (2005), which requires great bodily harm, permanent disability, or permanent disfigurement. Unlike the crime committed in *Spradlin*, this defendant committed the offense with force and violence by biting the victim and causing lacerations that required emergency medical care. This crime surely falls within the catch-all provision of the PRR statute.

In this case, the defendant was released from the Department of Corrections on August 23, 2005. Less than a year later, the defendant committed the instant felony battery charge. This qualifies the defendant as a PRR under section 775.082(9)(a)1.(o). We therefore reverse the sentence and remand the case to the trial court to impose the PRR sentence.

Reversed and Remanded.

TAYLOR and HAZOURI, JJ., concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Martin Bidwill, Judge; L.T. Case No. 06-103CF10A.

Bill McCullom, Attorney General, Tallahassee, and James J. Carney, Assistant Attorney General, West Palm Beach, for appellant.

No appearance filed for appellee.

Not final until disposition of timely filed motion for rehearing.