IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

LAMARIA DEAN,

Petitioner,

v. Case No. 5D20-1097

STATE OF FLORIDA,

Respondent.

_____/

Opinion filed September 4, 2020

Petition for Writ of Prohibition,
Tom Young, Respondent Judge.

Robert Wesley, Public Defender,
and Joshua Sinclair, Assistant Public
Defender, Orlando, for Petitioner.

Ashley Moody, Attorney General,
Tallahassee, and Douglas T. Squire,
Assistant Attorney General, Daytona
Beach, for Respondent.

WALLIS, J.

Petitioner seeks a writ of prohibition in this case following the circuit court's denial of her motion to dismiss for lack of subject matter jurisdiction. Petitioner argues that the amendment to section 812.014, Florida Statutes (2019), applied retroactively and, therefore, the information, which alleged that Petitioner committed a theft of $300 or more,

charged her with a first-degree misdemeanor rendering jurisdiction in the county court. We agree and grant the petition.

On January 14, 2020, Petitioner was charged by information with one count of third-degree grand theft in violation of section 812.014(2)(c)1., Florida Statutes (2019). The information alleges that on August 2, 2019, Petitioner stole property valued at more than $300. The State contends that its evidence will show that the value of the property allegedly stolen is "just over $400." Up until September 30, 2019, the applicable theft statute made theft of $300 or more, but less than $5,000, a third-degree felony. § 812.014(2)(c)1., Fla. Stat. (2019). However, the Legislature amended the monetary requirements of third-degree theft to $750 or more, but less than $5,000, to be effective as of October 1, 2019. § 812.014(2)(c)1., Fla. Stat. (2019). This amendment reduced the penalty for theft between $300 and $749 from a third-degree felony to a first-degree misdemeanor. § 812.014(2)(c)1., Fla. Stat. (2019).

Preliminarily, we note that article X, section 9 of the Florida Constitution was amended to read, "Repeal of a criminal statute shall not affect prosecution for any crime committed before such repeal."[1] This amendment, which is commonly referred to as the "Savings Clause," altered our constitution so that there would "no longer be any provision in the Florida Constitution that would prohibit the Legislature from applying an amended criminal statute retroactively to pending prosecutions or sentences." Jimenez v. Jones, 261 So. 3d 502, 504 (Fla. 2018).

[1] This amendment went into effect on January 8, 2019.

On June 7, 2019, the Legislature enacted section 775.022, Florida Statutes (2019), to effectuate the purpose of the Savings Clause, providing specifically**:**

> (3) Except as expressly provided in an act of the Legislature or as provided in subsections (4) and (5), the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:
>
> (a) The prior operation of the statute or a prosecution or enforcement thereunder.
>
> (b) A violation of the statute based on any act or omission occurring before the effective date of the act.
>
> (c) A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.
>
> (4) If a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

This statute makes it clear that although criminal statutes generally apply prospectively, an exception lies as "expressly provided in an act of the Legislature or as provided in subsections (4) and (5)." § 775.022(3), Fla. Stat. (2019). Subsection (4) specifically demonstrates the Legislature's intent that amendments to sentencing laws "must" be applied retroactively to cases in which the defendant has not yet been sentenced.

In denying Petitioner's motion to dismiss, the circuit court held that Stapleton v. State, 286 So. 3d 837 (Fla. 5th DCA 2019), is controlling. We find that the trial court's reliance on Stapleton is misplaced because in Stapleton the defendant was sentenced before section 775.022(4) went into effect.

Here, Petitioner had not yet been sentenced when the amendment to the theft statute took effect. Because section 775.022(4) clearly demonstrates the Legislature's intent for the theft amendment to apply retroactively, the circuit court erred in denying Petitioner's motion to dismiss. Furthermore, the amendment to the theft statute and the passage of section 775.022 divest the circuit court of its jurisdiction to hear this case. See § 34.01(1)(a), Fla. Stat. (2020). Therefore, we grant the petition for writ of prohibition. See English v. McCrary, 348 So. 2d 293, 298 (Fla. 1977) (explaining that a writ of prohibition may be granted when it is shown that a lower court is without jurisdiction to hear a case).

PETITION GRANTED.

EVANDER, C.J. and EDWARDS, J., concur.