

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-537

LEE B. PRICE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Jackson County.
Wade Mercer, Judge.

August 31, 2020

PER CURIAM.

AFFIRMED. *See Owens v. State*, 45 Fla. L. Weekly D2011 (Fla. 1st DCA Aug. 25, 2020) (holding that whether section 948.06(2), Florida Statutes (2019), applies to a defendant who committed an offense before the statute was amended, when imposing sentence for a violation of probation, a trial court is limited under section 948.06(2)(f)1. to modifying or continuing probation or imposing a sentence of up to 90 days in county jail only when a defendant “meet[s] all four conditions of subsection 948.06(2)(f)1.”).

ROWE and NORDBY, JJ., concur; WINOKUR, J., concurs with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

WINOKUR, J., concurring.

The State argues that Price is not entitled to the benefit of the sentencing limitation imposed in section 948.06(2)(f), Florida Statutes (2019), as revised, because his crimes were committed prior to the effective date of the revised statute. Prior to 2019, I would have agreed with this argument and held that the revised statute cannot apply to Price. *See, e.g., State v. Smith*, 547 So. 2d 613, 616 (Fla. 1989) (holding that “it is firmly established law that the statutes in effect at the time of commission of a crime control as to the offenses for which the perpetrator can be convicted, as well as the punishments which may be imposed”) (quoting *Heath v. State*, 532 So. 2d 9, 10 (Fla. 1st DCA 1988)).

However, this argument ignores section 775.022, Florida Statutes, enacted in 2019. Subsection (4) of this statute reads as follows:

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 the date of imposition of the penalty the relevant date for determining whether a new penalty applies, rather than the date of the offense.* In other words, section

* Prior to 2018, article X, section 9 of the Florida Constitution, known as the “Savings Clause,” prohibited any statutory amendment from altering the punishment for a crime committed

775.022(4) supersedes *Smith*, and the cases citing the “firmly established” rule set forth in *Smith*.

Price committed the offense that led to his probation, and ultimately to his prison sentence following revocation of probation, prior to the 2019 version of section 948.06(2)(f). However, the 2019 amendment to 948.06(2)(f) “reduced” punishment, because prior to the amendment a court was not limited in its ability to revoke probation by the fact that the probationer committed a “low-risk technical violation.” See § 948.06(2)(e), Fla. Stat. (2018). And because the amendment reduced punishment, the punishment “must be imposed according to the statute as amended.” § 775.022(4), Fla. Stat.

For this reason, Price is not foreclosed from application of 948.06(2)(f) by virtue of the fact that he committed the crime prior to the effective date of the statutory amendment. I agree with the majority that Price is not entitled to the benefit of the sentence limitation of section 948.06(2)(f), but not because Price committed the crime prior to the amendment.

prior to the amendment. However, the Savings Clause was revised by ballot measure in 2018, to repeal this portion of the section. Without this repeal, section 775.022(4) would have required an unconstitutional application of statutory amendments affecting sentencing. But after the repeal, section 775.022(4) does not violate the Savings Clause.

Andy Thomas, Public Defender, and Megan Long, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Daren L. Shippy, Assistant Attorney General, Tallahassee, for Appellee.