

Supreme Court of Florida

No. SC00-406

DONALD HUNTER,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[March 28, 2002]

QUINCE, J.

We have for review the decision in Hunter v. State, 751 So. 2d 181 (Fla. 2d DCA 2000), which certified conflict with the decision in State v. Huggins, 744 So. 2d 1215 (Fla. 4th DCA 1999), approved, 802 So. 2d 276 (Fla. 2001). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const.

With regard to the issue of whether burglary of a dwelling, whether occupied or not, qualifies Hunter for sentencing as a prison releasee reoffender, we vacate the decision of the Second District Court of Appeal and remand for

reconsideration upon application of our decision in State v. Huggins, 802 So. 2d 276 (Fla. 2001).

Hunter also raises other constitutional challenges to the Prison Releasee Reoffender Punishment Act (PRRP), specifically, that the PRRP violates prohibitions against double jeopardy and cruel and unusual punishment. The Second District denied these claims, citing Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999), approved in part and quashed in part, 770 So. 2d 655 (Fla. 2000). As to these constitutional claims, we approve the decision of the Second District based on our decisions in Grant v. State, 770 So. 2d 655 (Fla. 2000), and State v. Cotton, 769 So. 2d 345 (Fla. 2000).

It is so ordered.

SHAW, HARDING, ANSTEAD, and PARIENTE, JJ., concur.
LEWIS, J., concurs in part and dissents in part with an opinion, in which WELLS, C.J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

LEWIS, J., concurring in part and dissenting in part.

I agree with the majority that the PRRP is constitutional. However, with respect to the question of whether burglary of a dwelling, whether occupied or not, qualifies the defendant for prison releasee reoffender sentencing, I respectfully

dissent for the reasons stated in my dissenting opinion, and for the reasons set forth in the dissenting opinion of Chief Justice Wells, in State v. Huggins, 802 So. 2d 276 (Fla. 2001).

WELLS, C.J., concurs.

Application for Review of the Decision of the District Court of Appeal - Certified Direct Conflict of Decisions

Second District - Case No. 2D99-2045

(Highlands County)

James Marion Moorman, Public Defender, and Douglas Chanco and William L. Sharwell, Assistant Public Defenders, Tenth Judicial Circuit, Bartow, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, Robert J. Krauss, Senior Assistant Attorney General, Chief of Criminal Law, and Ronald Napolitano, Assistant Attorney General, Tampa, Florida,

for Respondent