Supreme Court of Florida

No. SC95837

WAHILL SALEH HACK,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[February 1, 2001]

LEWIS, J.

We have for review Hack v. State, 733 So. 2d 598 (Fla. 5th DCA 1999), which expressly and directly conflicts with the opinion in State v. Cotton, 728 So. 2d 251 (Fla. 2d DCA 1998), quashed, 769 So. 2d 345 (Fla. 2000). We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.

Hack challenges his five-year prison sentence under the Prison Releasee Reoffender Act[1] ("the Act") on several grounds, all of which have been addressed

[1] See § 775.082(8), Fla. Stat. (1997).

by other opinions of this Court. See Grant v. State, 770 So. 2d 655 (Fla. 2000) (rejecting an ex post facto challenge to the Act and holding that the Act violates neither the single subject rule for legislation nor principles of equal protection); McKnight v. State, 769 So. 2d 1039 (Fla. 2000) (holding that a defendant has the right both to present evidence to prove that the defendant does not qualify for sentencing under the Act and to challenge the State's evidence regarding the defendant's eligibility for sentencing as a prison releasee reoffender); State v. Cotton, 769 So. 2d 345 (Fla. 2000) (holding that the Act violates neither separation of powers nor principles of due process by allowing a "victim veto" that precludes application of the Act, as well as holding that the Act is not void for vagueness and does not constitute a form of cruel or unusual punishment); Ellis v. State, 762 So. 2d 912 912 (Fla. 2000) (recognizing that, "[a]s to notice, publication in the Laws of Florida or the Florida Statutes gives all citizens constructive notice of the consequences of their actions") (quoting State v. Beasley, 580 So. 2d 139, 142 (Fla. 1991)). Accordingly, the decision in Hack is approved to the extent it is consistent with Cotton,[2] Ellis, McKnight, and Grant.

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[2] In its decision in Hack, the Fifth District cited to its decision in Speed v. State, 732 So. 2d 17 (Fla. 5th DCA 1999), approved, No. SC95706 (Fla. Feb. 1, 2001). In our decision in Cotton, we disapproved the opinion in Speed to the extent that it implied, in dicta, that a subsection of the Act gives to each victim a veto over the imposition of the mandatory sentences that are prescribed in other parts of the Act.

It is so ordered.

WELLS, C.J., and SHAW, HARDING, ANSTEAD and PARIENTE, JJ, concur.
QUINCE, J., dissents with an opinion.

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

QUINCE, J., dissenting.

I dissent for the reasons stated in my dissent in State v. Cotton, 769 So. 2d 345, 358-59 (Fla. 2000).

Application for Review of the Decision of the District Court of Appeal - Statutory Validity

Fifth District - Case No. 5D98-3031

(Orange County)

James B. Gibson, Public Defender, and Lyle R. Hitchens, Assistant Public Defender, Seventh Judicial Circuit, Daytona Beach, Florida,

for Petitioner

Robert A. Butterworth, Attorney General, and Belle B. Schumann, Kristen L. Davenport and Kellie A. Nielan, Assistant Attorneys General, Daytona Beach, Florida,

for Respondent