

No Request Case

IN THE SUPREME COURT OF FLORIDA

TYRONE E. McDANIEL,

Petitioner.

v.

STATE OF FLORIDA,

Respondent.

Case No. 70, 1987

FILED

SID J. WHITE

SEP 17 1987

CLERK, SUPREME COURT

Deputy Clerk

DISCRETIONARY REVIEW OF DECISION
OF THE DISTRICT COURT OF
APPEAL SECOND DISTRICT
STATE OF FLORIDA

BRIEF OF RESPONDENT ON MERITS

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STATEMENT OF CASE AND OF THE FACTS

Respondent accepts the statement of the case and of the facts as appears in petitioner's brief.

SUMMARY OF ARGUMENT

This court has already affirmed the lower court's ruling that possession of under 20 grams of cannabis with intent to sell constitutes a felony and this court need not reconsider that decision.

ARGUMENT

ISSUE

THE DISTRICT COURT DID NOT ERR
IN REVERSING THE CIRCUIT COURT'S
DISMISSAL OF THE INFORMATION.

Petitioner recognizes that the lower court's decision in State v. McGee, 494 So.2d 255 (Fla. 2 DCA 1986), which was controlling to its decision in the instant case, was affirmed with approval by this court in McGee v. State, Case No. 69,340, decided July 9, 1987, 12 FLW 332.

Undaunted he asks this court to reconsider saying its decision is contra to legislative intent. Without rehashing all the arguments we disagree. This court's decision does in fact comport with the legislature intent.

otherwise the words with the intent to sell would be superfluous.

Petitioner's hypothetical does not pass analysis. If one possesses over 100 lbs of cannabis he would be guilty of trafficking as a felony of the first degree. Fla Stat. 893.135(a)(1). It is not as petitioner suggests a third degree felony.

CONCLUSION

Based on the above and foregoing reasons, arguments and authorities the decision of the District Court of Appeals, Second District, State of Florida, in this cause should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to John T. Kilcreases, Jr., Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida, 33830, on this 15th day of September, 1987.


OF COUNSEL FOR RESPONDENT.