IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 2009

LACHARVIS WILLIAMS,

Appellant,

v. Case No. 5D08-881

STATE OF FLORIDA,

Appellee.

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Opinion filed April 17, 2009

Appeal from the Circuit Court
for Sumter County,
William H. Hallman, III, Judge.

James S. Purdy, Public Defender, and Susan A. Fagan, Assistant Public Defender, Daytona Beach, for Appellant.

Bill McCollum, Attorney General, Tallahassee, and Rebecca Rock McGuigan, Assistant Attorney General, Daytona Beach, for Appellee.

MONACO, J.

Although the appellant, Lacharvis Williams, raises a number of issues in this appeal from his judgment and sentence for second degree murder while carrying or possessing a firearm, burglary of a dwelling while in possession of a firearm, and grand theft, we find only one issue to be meritorious. Because the sentence imposed upon

him for grand theft should not have been consecutive to the other sentences he received, we reverse for resentencing regarding this crime.

After the conclusion of his jury trial the State filed a notice of its intention to seek habitual offender status with respect to Mr. Williams, as well as a notice of his qualification as a prison releasee reoffender. At sentencing Mr. Williams was found to be both a prison releasee reoffender and a habitual violent felony offender. As to the murder and burglary charges, the trial court sentenced him to serve life sentences as a prison releasee reoffender. As to the grand theft charge, Mr. Williams was sentenced to ten years imprisonment as a habitual violent felony offender (with five years being mandatory), to be served consecutively to the two life sentences.

On appeal Mr. Williams argues that his sentence for grand theft should not have been imposed consecutively to the other sentences because all charges grew out of the same criminal episode, and because the habitual violent felony offender sentence had already been enhanced. He argues, and we agree, that the point of *Hale v. State,* 630 So. 2d 521 (Fla. 1993), *cert. denied*, 513 U.S. 909 (1994) and *Daniels v. State*, 595 So. 2d 952 (Fla. 1992), was that once the habitual offender sentencing scheme was utilized to enhance a sentence beyond the statutory maximum on one or more counts arising from a single criminal episode, consecutive sentencing cannot be used to further lengthen the overall sentence. *See Fuller v. State*, 867 So. 2d 469, 470 (Fla. 5th DCA), *review denied*, 887 So. 2d 1236 (Fla. 2004).

Although the State calls our attention to *Reeves v. State*, 920 So. 2d 724 (Fla. 5th DCA 2006), *approved,* 957 So. 2d 625 (Fla.), *cert. denied,* 128 S.Ct. 537 (2007), that case does not authorize the sentence here. In *Reeves* the supreme court

determined that because a prison releasee reoffender sentence is not an enhanced sentence, it could be required to be served consecutive to an unenhanced Criminal Punishment Code sentence arising out of the same criminal episode. A habitual violent felony offender sentence, however, is an enhanced sentence. *See* § 775.084, Fla. Stat. (2008). Thus, under the reasoning of the supreme court in *Hale*, the consecutive sentence for the grand theft conviction was improper.

Accordingly, we affirm the judgment and sentence in all respects except regarding the consecutive nature of the habitual violent felony offender sentence for grand theft. As to that charge, we remand for resentencing.

AFFIRMED in part, REVERSED in part, and REMANDED.

PALMER, C.J., and EVANDER, J., concur.