NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

THOMAS GIDEON PILETTE,

Appellant,

Appeal No. CRC 10-00015APANO
UCN ~~522009MM024740XXXXNO~~
522010AP000015XXXXCR

STATE OF FLORIDA

Appellee.
_____/

Opinion filed _____.

Appeal from a Judgment and Sentence
entered by the Pinellas County Court
County Judge James V. Pierce

Charles E. Lykes, Jr., Esquire
Attorney for Appellant

Timothy F. Sullivan, Esquire
Office of the State Attorney
Attorney for Appellee

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Appellant, Thomas Gideon Pilette's appeal from a from a conviction, after a jury trial, of unlawfully storing or leaving a vessel in a wrecked, junked or substantially dismantled condition or abandoned upon or

in any public water, a first degree misdemeanor, in violation of § 823.11 Fla. Stat. (1989). After reviewing the briefs and record, this Court affirms the judgment and sentence.

Factual Background and Trial Court Proceedings

In December 2008, Appellant, Thomas Gideon Pilette, entered a written contract to purchase a sailboat that was twenty-seven feet in length and had run aground on a sandbar in Maximo Park. Mr. Pilette paid a deposit consisting of $300 and a computer to the seller and was given the key to the lock on the sailboat. The seller would retain the title to the boat until Appellant paid the balance of the purchase price, another $300. The next day the sailboat was no longer in Maximo Park and was thereafter found in a derelict and damaged condition in the waters of Tampa Bay near Coquina Key. On January 10, 2009, Mr. Pilette and the man who had contracted to sell him the boat went to the location of the sailboat and Mr. Pilette agreed to complete the purchase if the remaining payment of $300 be forgiven. Appellant signed a document accepting responsibility for the sailboat and acknowledging that he had received clean title. He was given the title to the sailboat.

A police officer with the Fish and Wildlife Commission, State of Florida testified to several points; (1) that on April 29, 2009 he met with Mr. Pilette regarding the sailboat which remained abandoned in the waters of Tampa Bay near Coquina Key; (2) that Mr. Pilette acknowledged to the officer that he had purchased the vessel, that he knew the vessel was abandoned off of Coquina Key and agreed to remove the vessel from public waters; (3) that the officer issued Mr. Pilette a written warning for leaving a derelict vessel upon the waters of the state and gave Mr. Pilette thirty days to remove the vessel;

and (4) that the officer spoke with Appellant multiple times after the warning was issued and Mr. Pilette continued to tell the officer he would remove the boat.

On August 26, 2009, a Misdemeanor Information was filed charging the Appellant with the above described offense. On March 16, 2010, Mr. Pilette was found guilty after a jury trial. This appeal was timely filed.

The Issue

The Appellant argues that Florida Statute § 823.11 is unconstitutionally vague. The remaining issues presented by the Appellant are considered, by this court, to be without merit. Those remaining issues will not be addressed in this opinion.

Standard of Review

Determinations concerning the constitutionality of statutes are pure questions of law subject to the de novo standard of review. *State v. Sigler,* 967 So2d 835, 841 (Fla. 2007).

The Constitutionality of Florida Statute § 823.11

In this appeal the Appellant challenges, for the first time, the constitutionality of Florida Statute § 823.11. Only the facial invalidity of a challenged statute may be raised for the first time on appeal. *Enriguez v. State,* 858 So.2d 338, 341 (Fla. 2nd DCA 2003).

> A facial challenge to a statute on grounds that it is void for vagueness is a difficult argument to present successfully for the first time on appeal. The difficulty arises largely because, when a statute does not reach constitutionally protected conduct, a facial challenge must establish that a statute is vague in all of its applications. *See Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 495, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) (stating that party who engages in "some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others"); *Sandstrom v. Leader,* 370 So.2d 3, 6 (Fla.1979) (stating "that marginal cases might exist where doubts may arise as to whether there may be prosecution under [a criminal statute] does not render the enactment unconstitutionally vague"); *Bryant v. State,*

> 712 So.2d 781, 783 (Fla. 2d DCA 1998) (citing *Flipside,* 455 U.S. at 495, 102 S.Ct. 1186) (stating when statute does not reach constitutionally protected conduct, "it may only be deemed void for vagueness if it is impermissibly vague in all of its applications").

Enriguez, 858 So.2d at 341. "A facial challenge considers only the text of the statute, not its application to a particular set of circumstances, and the challenger must demonstrate that the statute's provisions pose a present total and fatal conflict with applicable constitutional standards." *Cashatt v. State,* 873 So.2d 430, 434 (Fla. 1st DCA 2004).

"A statute will withstand constitutional scrutiny under a void for vagueness challenge if it is specific enough to give persons of common intelligence and understanding adequate warning of the proscribed conduct. *Sanicola v. State,* 384 So2d 152 (Fla. 1980). The language must convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. *State v. Hagan,* 387 So.2d 943, 945 (Fla.1980); *see also State v. Manfredonia,* 649 So.2d 1388 (Fla.1995)." *Enriguez,* 858 So.2d at 341-342; *See Roth v. U. S.*, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957). "[A] statute 'need not attain ideal linguistic precision.' (citation omitted)." *State v. Nichols*, 892 So.2d 1221, 1227 (Fla. 1st DCA 2005). "[I]mprecise language does not render a statute fatally vague, so long as the language 'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.' (citation omitted). And if a reasonable and practical construction can be given to the language of a statute, or its terms made reasonably certain by reference to other definable sources, it will not be held void for vagueness." *Cashatt v. State,* 873 So.2d 430, 435 (Fla. 1st DCA 2004). "[A] defendant may not successfully challenge a statute as vague when the record shows that the

defendant engaged in conduct clearly proscribed by the plain and ordinary meaning of the statute." *State v. Cyphers*, 873 So.2d 471, 473 (Fla. 2nd DCA 2004).

The Present Case

In the present case, the Appellant argues that Florida Statute § 823.11 "cannot be said to fairly put a citizen of this State on notice of what conduct is prohibited by this act." First, he argues subparts (a) (b) and (c) of Florida Statute § 823.11(1) are not joined by a conjunctive. Second, the definition of "Derelict vessel" contained in § 823.11(2) is confusing. Third § 823.11(4) does not describe what violation is to be punished; it says only "[a]ny person, firm, or corporation violating this act."

At the jury trial in the present case there was testimony and tangible evidence presented from which the jury could lawfully find; (1) that the Mr. Pilette owned the involved sailboat, (2) that he knew that it had been "left, stored or abandoned" in a "wrecked, junked or substantially dismantled condition" upon the public waters of Tampa Bay near Coquina Key in Pinellas County (3) that knowing the location and condition of his sailboat, Mr. Pilette did nothing and left it on or in the public waters and (4) that Mr. Pilette made repeated assurances to police officer with the Fish and Wildlife Commission that he would remove the sailboat from the public waters. The record shows that Mr. Pilette engaged in conduct clearly proscribed by the plain and ordinary meaning of the statute. Mr. Pilette is in no position to lawfully challenge the statute as vague.

This court concludes that Florida Statute § 823.11 is specific enough to give persons of common intelligence and understanding adequate warning of the proscribed conduct. Florida Statute § 823.11 is not void for vagueness.

Conclusion

This court concludes that the judgment and sentence of the trial court should be affirmed.

IT IS THEREFORE ORDERED that the judgment and sentence of the trial court is affirmed.

ORDERED at Clearwater, Pinellas County, Florida this 8th day of February, 2011.

Original order entered on February 8, 2011 by Circuit Judges Michael F. Andrews, Raymond O. Gross, and R. Timothy Peters.

cc: Honorable James V. Pierce
Charles E. Lykes, Jr., Esquire
Office of the State Attorney