

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA.

MIKE ROSE,

Appellant,

APPELLATE DIVISION (CRIMINAL)

Case No.: 502008AP900064AXXXMB

Co. Court Case No.: 502007MM010418AXXMB

v.

STATE OF FLORIDA,

Appellee.

Opinion filed: 12/10/10

Appeal from Judge, Reginald Corlew
County Court in and for Palm Beach County.

For Appellant, Emily Ross-Booker, Esq., Office of the Public Defender, 421 Third Street, 6th
Floor, West Palm Beach, FL 33401.

For Appellee, Michelle Zieba, Esq., Office of the State Attorney, 401 N. Dixie Highway, West
Palm Beach, FL 33401.

PER CURIAM.

Appellant was charged by Information with Engaging in Contracting Without Certification, contrary to section 489.127(1)(f), Florida Statutes. Appellant proceeded to a bench trial on September 9, 2008. During the trial, after the State rested, Appellant moved for a Judgment of Acquittal on the basis that the State did not prove his violation of section 489.127(1)(f), Florida Statutes (2005). The court denied the motion. Appellant renewed the motion on the same grounds after resting and the trial court took the motion under advisement. On September 25, 2008, the trial court entered an Order denying the Motion for Judgment of Acquittal and entered a written verdict

finding Appellant guilty as charged.

Appellant appealed the verdict and this Court issued an Opinion on October 8, 2009, finding that the violation of the county license requirement may have been enforced only by a county code enforcement officer because section 489.127(5), Florida Statutes does not provide for its enforcement by state officials. This Court reversed the lower court's decision and remanded the case for a new trial. On October 14, 2009, Appellant filed a Motion for Rehearing, arguing that according to section 489.127(5), Florida Statutes, the proper remedy for a violation is an administrative hearing and not a trial and that this Court should have therefore reversed and remanded for Appellant to receive an administrative hearing, if code enforcement issues a citation. On October 20, 2009, the State filed a Motion for Rehearing of the Court's Opinion. The State maintains that in issuing its Opinion, this Court overlooked a portion of the statute and that section 489.127, Florida Statutes, clearly provides criminal penalties. The State contends they are entitled to prosecute under section 489.127.

Section 489.127(5), provides in pertinent part:

Each county or municipality **may, at its option**, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) and s. 489.132(1) against persons who engage in activity for which a county or municipal certificate of competency or license or state certifications or registration is required. (emphasis added).

The Office of the Attorney General has stated the following:

Primary responsibility for the discipline of certified contractors is vested in the Construction Industry Licensing Board, pursuant to s. 489.129, F.S. However, local governments have certain specified powers for disciplining such contractors pursuant to ss. 489.113(4), and 489.127, F.S. **In addition, violation of s. 489.127(1), F.S., is a crime which is prosecutable by the State Attorney.**

1990 Fla. Op. Atty. Gen. 226 (emphasis added).

The earlier Opinion of this Court was in error. A violation of section 489.127, is a crime which is prosecutable by the State Attorney and in this particular case, the State Attorney chose to prosecute. See 1990 Fla. Op. Atty. Gen. 226. The fact that a county or municipality may, at its option, designate a code enforcement officer to enforce the statute is irrelevant because the State Attorney chose to prosecute the violation of section 489.127(1)(f) and the State Attorney has the authority to prosecute the violation.

Furthermore, the State was able to prove that Appellant violated section 489.127(1)(f).

Section 489.127(1)(f), states in pertinent part:

(1) No person shall:

(f) Engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified.

Section 489.127 does not designate that a State of Florida license is required but rather that one cannot engage in the capacity of a contractor without being duly registered or certified. See Fla. Stat. § 489.127(1)(f). The statute appears to encompass any type of contracting work done without any type of licensing. Appellant entered into a contract with the victim and Appellant conceded that he did not have a State of Florida license and did not have a county license. The State was able to prove that Appellant violated section 489.127(1)(f) and the trial court properly denied Appellant's Motion for Judgment of Acquittal.

Accordingly, the Opinion issued by this Court on October 8, 2009 is VACATED. Based on the foregoing, the decision of the trial court is hereby AFFIRMED.

COLBATH, SMITH and HOY, JJ. concur.