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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

v.

CASE NO. 64,629

WILLIE WATTS,
Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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II ARGUMENT

ISSUE PRESENTED

THE DISTRICT COURT'S OPINION IN THE PRESENT CASE DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH JENKINS V. WAINWRIGHT, 322 So.2d 477 (Fla. 1975); BORGES V. STATE, 415 So.2d 1265 (Fla. 1982); STATE V. CARPENTER, 417 So.2d 986 (Fla. 1982); OR SMITH V. STATE, 430 So.2d 448 (Fla. 1983).

This Court's jurisdiction to review decisions of courts of appeal because of alleged conflict is invoked by (1) the announcement of a rule of law which conflicts with a law previously announced by the Supreme Court or (2) the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case. Mancini v. State, 312 So.2d 732 (Fla. 1975); Neilsen v. City of Sarasota, Fla., 117 So.2d 731 (Fla. 1960). Contrary to petitioner's assertion, the district court's decision in Watts v. State, __ So.2d __ (Fla. 1st DCA Case No. AN-15, opinion filed November 10, 1983) (8 FLW 2680), is not in direct and express conflict with Jenkins v. Wainwright, supra; Borges v. State, supra; State v. Carpenter, supra; or Smith v. State, supra.

In order to allege conflict with the above-cited cases, petitioner asserts that the district court's opinion herein "is nothing more than an attempt to resurrect the single transaction rule" (PB-3). Even a cursory reading of the instant opinion reveals that the district court's decision was not premised on the single transaction rule. As stated by

the First District, "the issue is purely one of statutory interpretation". 8 FLW at 2680. The question is not:

...how many sentences may be imposed upon two lawful judgments in consequence of the Florida legislature having rescinded, save for lesser included offenses, the single transaction rule. That judicial rule previously allowed sentencing for only the most serious of adjudicated offenses committed in a single transaction. Simmons v. State, 151 Fla. 778, 10 So.2d 436 (1942). Section 775.021(4), Florida Statutes (1981), has now "abrogated the single transaction rule," Borges, 415 So.2d at 1266, and requires separate sentences upon properly adjudicated offenses within "one criminal transaction or episode" if the judgments are based on "two or more criminal statutes." Even absent Bell's double jeopardy questions, determining the appropriateness of two or more sentences can be difficult when the properly adjudicated offenses are catalogued in subsections of a single statute. See Thomas v. State, 405 So.2d 1015 (Fla. 1st DCA 1981), and Getz v. State, 428 So.2d 254 (Fla. 1st DCA 1982). But the convictions here, for Watts' simultaneous possession of two prisonmade knives, are unambiguously founded upon the same criminal statute, section 944.47(1)(c). For two reasons, therefore, section 775.021(4) cannot control whether Watts' conduct should be considered twice a violation of section 944.47(1)(c): first, because section 775.021(4) does not come into play unless judgments are properly entered "for violation of two or more criminal statutes"; and second, because section 775.021(4) does not say, except by excluding sentences for lesser included offenses, how many judgments are to be entered for conduct that may be conceived, but need not be, as violating the same statute twice.

The question here, similar to that in Hearn v. State, 55 So.2d 559 (Fla. 1951), and identical to that in State v. Grappin, 427 So. 2d 760, 761, n.3 (Fla. 2d DCA 1982), is whether the substantive statute, section 944.47(1)(c), must be interpreted as making Watts' simultaneous possession of two contraband

knives two units of prosecution despite the absence of time or space differences in his possession, or in its proof, that in common understanding would distinguish his possession of one knife from his possession of the other. (footnotes omitted).

8 FLW at 2680.

Unquestionably, the district court distinguished the issue in this case from an issue pertaining to the repudiated and abrogated single transaction rule. Rather, the district court followed the Fifth District's "chronological and spatial relationships" approach in Castleberry v. State, 402 So.2d 1231 (Fla. 5th DCA 1981) in interpreting the statute under which respondent was convicted. In Castleberry, similarly to Watts, the Fifth District found the single transaction analysis and Section 775.021(4), Florida Statutes inapplicable to the facts therein, since only one violation of the criminal statutes occurred. Id. at 1232. Thus, it is clear from Watts v. State, supra, and Castleberry v. State, supra that the "chronological spacial relationship" approach is not the equivalent of, nor an attempt to resurrect the single transaction rule.

The cases cited by petitioner as conflicting with the instant decision are all predicated upon the single transaction rule or Section 775.021(4), Florida Statutes, which abrogated that rule. Contrary to Jenkins, Borges, Carpenter, and Smith, respondent was not convicted twice and sentenced twice for a violation of two or more criminal statutes and/or

subsections. Respondent was convicted twice and sentenced twice for the simultaneous possession of two prisonmade knives, a violation of one criminal statute and/or subsection, Section 944.47(1)(c), Florida Statutes. The district court herein did not hold, as petitioner asserts, that respondent could only be convicted once for committing two offenses. Instead, the district court held that respondent's simultaneous possession of two knives constituted only one offense, one violation of Section 944.47(1)(c). These are two very separate and distinct holdings. Petitioner's assertion of the holding involves the construction and interpretation of Section 775.021(4), which the First District found to be inapplicable to the instant facts. The holding of Watts involves only a question of statutory interpretation, i.e. interpreting Section 944.47(1)(c).

Respondent agrees that when a violation of two or more criminal statutes occurs during a single episode it is proper to impose sentence separately for each violation, unless one was a lesser included offense of the other. Smith v. State, supra; Carpenter v. State, supra; Borges v. State, supra; Jenkins v. Wainwright, supra. This was not the issue in the instant case. Therefore, the district court's opinion in Watts v. State, supra, did not announce a rule of law which expressly and directly conflicts with the rule of law previously announced by this Court in the cases cited by petitioner. The First District Court of Appeal was correct in vacating one of respondent's convictions.

III CONCLUSION

WHEREFORE, based upon the foregoing argument, reasoning, and citation of authority, respondent respectfully urges that this Honorable Court does not have discretionary jurisdiction to review the decision of the district court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Respondent's Brief on Jurisdiction has been furnished by hand to Mr. Richard Patterson, Assistant Attorney General, The Capitol, Tallahassee, Florida, Attorney for Petitioner; and a copy has been mailed to respondent, Mr. Willie Watts, #071508, Post Office Box 747, Starke, Florida, 32091, this 12th day of January, 1984.

Charlene V. Edwards
CHARLENE V. EDWARDS