

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,  
Petitioner,

vs.

WILLIE WATTS,  
Respondent.

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CASE NO. 64,629

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PETITIONER'S BRIEF ON JURISDICTION

JIM SMITH  
ATTORNEY GENERAL

RICHARD A. PATTERSON  
ASSISTANT ATTORNEY GENERAL

THE CAPITOL, 1502  
TALLAHASSEE, FLORIDA 32301  
(904) 488-0600

COUNSEL FOR PETITIONER

TOPICAL INDEX

	<u>Page</u>
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
ISSUE PRESENTED	3
ARGUMENT	3
CONCLUSION	5,6
CERTIFICATE OF SERVICE	6

AUTHORITIES CITED

Cases

<u>Borges v. State</u> , 415 So.2d 1265 (Fla. 1982)	4
<u>Jenkins v. Wainwright</u> , 322 So.2d 447, 479 (Fla. 1975)	4
<u>Smith v. State</u> , 430 So.2d 448 (Fla. 1983)	4
<u>State v. Carpenter</u> , 417 So.2d 986, 987 (Fla. 1982)	4

Statute

944.47(1)(a)5, Florida Statutes (1981)	4
944.47(1)(c), Florida Statutes (1981)	3,5

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PRELIMINARY STATEMENT

Willie Watts, Respondent, was the defendant in the Circuit Court in and for Union County, Florida, and the Appellant in the District Court of Appeal, First District. The State of Florida, Petitioner, was the prosecution and the Appellee, respectively. The parties will be referred to as they appear before this Court.

The following symbol will be used in this brief followed by the appropriate page number(s) in parentheses:

"A" -- Appendix

STATEMENT OF THE CASE AND FACTS

Respondent Willie Watts was tried by a jury and convicted of two counts of possession of a weapon by a state prisoner. Respondent was separately sentenced for the two offenses, the sentences to be served concurrently. On appeal, one of the convictions and sentences was affirmed, however, the other conviction and sentence was reversed (A 14). Notice to invoke this Court's discretionary review was filed on December 12, 1983.

Petitioner accepts the sequence of events as related in the opinion of the First District Court of Appeal. See (A 1-17).

## ISSUE PRESENTED

THE DISTRICT COURT'S OPINION IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS 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); AND SMITH V. STATE, 430 So.2d 448 (Fla. 1983).

## ARGUMENT

Respondent was separately convicted and concurrently sentenced on two counts of possession of a weapon by a state inmate, in violation of §944.47(1)(c), Florida Statutes (1981). On appeal, the First District Court of Appeal reversed one of the convictions, holding that respondent was subject to only a single prosecution because "his possession of two knives was simultaneous in time and essentially simultaneous in space" (A 14). Petitioner submits that the district court's "chronological spatial relationship" approach is nothing more than an attempt to resurrect the single transaction rule, which has been both legislatively and judicially repudiated in Florida, and therefore the instant decision is in direct and express conflict with the cases cited for conflict.

Section 944.47(1)(c) provides:

It is unlawful for any inmate of any state correctional institution or any person while upon the grounds of any state correctional institution to be in actual or constructive possession of any article or thing declared by this section to be contraband, except as authorized by the officer in charge of such correctional institution.

Section 944.47(1)(a)5. includes as contraband "any firearm or weapon of any kind..." The First District Court of Appeal held that respondent could only be convicted once for committing two offenses (i.e. two violations of §944.47(1)(c)).

In Jenkins v. Wainwright, 322 So.2d 477, 479 (Fla. 1975), this Court held that the defendant could be convicted and sentenced separately for the simultaneous possession of two separate drug substances "each of which constitutes in and of itself a separate violation of law."

In Borges v. State, 415 So.2d 1265 (Fla. 1982), this Court held that the defendant's separate convictions and sentences for burglary while armed with a dangerous weapon, possession of burglary tools, possession of a firearm by a convicted felon, and carrying a concealed firearm were proper even though all of the offenses were committed as part of a single transaction.

In State v. Carpenter, 417 So.2d 986, 987 (Fla. 1982), this Court upheld the defendant's separate convictions and sentences for the offenses of battery upon a law enforcement officer and "offering and doing violence" to the officer "by grabbing him by the throat and trying to choke him," both of which occurred when the defendant attacked the officer after being arrested for driving under the influence of intoxicating liquors.

In Smith v. State, 430 So.2d 448 (Fla. 1983), this Court upheld separate convictions and sentences for the possession and sale of the same drugs in the same transaction.

The opinion of the First District Court of Appeal in the present case directly and expressly conflicts with this Court's decisions which authorize multiple convictions and separate sentences when separate criminal offenses are violated as part of a single criminal transaction, except for lesser-included offenses. Respondent should not be insulated from separate punishments for multiple violations of §944.47(1)(c) merely because because he was caught in the simultaneous possession of more than one weapon. Further, it cannot reasonably be said that the legislature would intend to allow possession of an arsenal of weapons with no greater penalty than that for possession of one weapon. Each time a state prisoner possesses "any firearm or weapon of any kind," he commits another criminal offense, regardless of nebulous "chronological and spatial relationships."

Therefore, the trial court was correct in adjudicating respondent guilty for each violation of §944.47(1)(c), and in separately sentencing him thereon. The First District Court of Appeal erred in vacating one of the convictions.

#### CONCLUSION

WHEREFORE, based on the foregoing argument, reasoning, and citation of authority, petitioner respectfully requests that this Court accept jurisdiction of the case and allow the issue presented herein to be determined on the merits.

Respectfully submitted:

JIM SMITH  
ATTORNEY GENERAL

  
RICHARD A. PATTERSON  
Assistant Attorney General

The Capitol, 1502  
Tallahassee, Florida 32301  
(904) 488-0600

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded to CHARLENE V. EDWARDS, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32302, this 22nd day of December, 1983.

  
RICHARD A. PATTERSON

OF COUNSEL.