

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 64,890

STEVEN SNOW,

Respondent.

FILED

SID J. WHITE

MAR 14 1984

ON DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT
COURT OF APPEAL

CLERK, SUPREME COURT

By

Chief Deputy Clerk

BRIEF OF RESPONDENT ON JURISDICTION

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

P. DOUGLAS BRINKMEYER
ASSISTANT PUBLIC DEFENDER
POST OFFICE BOX 671
TALLAHASSEE, FLORIDA 32302
(904) 488-2458

ATTORNEY FOR RESPONDENT

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 Petitioner, :
v. : CASE NO. 64,890
STEVEN SNOW, :
 Respondent. :
_____:

BRIEF OF RESPONDENT ON JURISDICTION

I PRELIMINARY STATEMENT

The parties will be referred to as they appear before this Court. The brief of petitioner on jurisdiction will be referred to as "PB"; the appendix attached to petitioner's brief on jurisdiction will be referred to as "PA". Attached as an appendix hereto is a copy of the decision of the First District.

II STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts.

III ARGUMENT

ISSUE PRESENTED

THE DECISION OF THE FIRST DISTRICT IS NOT
IN EXPRESS AND DIRECT CONFLICT WITH ANY
OTHER REPORTED DECISION.

Petitioner argues that this decision conflicts with Pedroso v. State, 420 So.2d 908 (Fla. 2d DCA 1983) (PB at 3-4). Pedroso held that a procedural sentencing error must be raised on direct appeal. Pedroso failed to do so on direct appeal. Since the Second District held the error should have been raised on direct appeal, it affirmed the denial of a motion to vacate pursuant to Florida Rule of Criminal Procedure 3.850, consistent with the many decisions from this Court, mostly in capital cases, which hold that a Rule 3.850 motion cannot be used to make arguments which should have been made on direct appeal.

Here, respondent argued the matter on direct appeal because there was an objection by trial counsel to the retention of jurisdiction over parole (PA at 8). Although the First District must have found the objection to be inadequate to preserve the issue for review on direct appeal, that does not mean that respondent is totally without a remedy. He may proceed via Rule 3.850.

The First District's decision to allow a collateral attack is consistent with the purpose of Rule 3.850, which is stated by this Court in its initial adoption in 1963:

The rule is intended to provide a complete and efficacious post-conviction remedy to

correct convictions on any grounds which subject them to collateral attack.


Roy v. Wainwright, 151 So.2d 825, 828 (Fla. 1983). Moreover, it is consistent with other cases which hold that unobjected-to sentencing errors, which cannot be argued on direct appeal, are properly reached by Rule 3.850. See, e.g., Gonzalez v. State, 392 So.2d 334 (Fla. 3d DCA 1981); Massey v. State, 389 So.2d 712 (Fla. 2d DCA 1980); Skinner v. State, 366 So.2d 486 (Fla. 3d DCA 1979); Smith v. State, 414 So.2d 274 (Fla. 5th DCA 1982); and Walker v. State, 442 So.2d 977 (Fla. 1st DCA 1983) (on rehearing). To accept petitioner's position would be to leave a defendant with no remedy while he is required to serve out an illegal sentence.

IV CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, this Court should deny discretionary review since there is no conflict, and since the First District's decision is consistent with the purpose of Rule 3.850 and other cases.

Respectfully submitted,

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT


P. DOUGLAS BRINKMEYER
Assistant Public Defender
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand to Assistant Attorney General Raymond Marky, The Capitol, Tallahassee, Florida; and by mail to Mr. Steven Snow, #088150, Post Office Box 1500, Cross City, Florida, 32628, this 14th day of March, 1984.


P. DOUGLAS BRINKMEYER
Assistant Public Defender