

IN THE SUPREME COURT OF FLORIDA

JOHNNY RAY OWENS, :
 :
 Petitioner, :
 :
 vs. :
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

Case No. 64,980

FILED
SID J. WHITE
APR 12 1984
CLERK, SUPREME COURT

By _____
CHIEF Deputy Clerk

DISCRETIONARY REVIEW OF DECISION OF
THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT OF FLORIDA

REPLY BRIEF OF PETITIONER ON MERITS

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

PAUL C. HELM
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PRELIMINARY STATEMENT

This Brief is filed on behalf of the Petitioner, JOHNNY RAY OWENS, in reply to the Brief of the Respondent, the State of Florida.

ARGUMENT

WHETHER AN INFORMATION WHICH ALLEGES THAT A DEFENDANT "CARRIED" A FIREARM IS SUFFICIENT TO ALLEGE AN ESSENTIAL ELEMENT OF AGGRAVATED ASSAULT, AN OFFENSE THAT IS STATUTORILY DEFINED BY SECTION 784.021(1)(a) AS AN ASSAULT WITH A DEADLY WEAPON?

The Brief of Respondent on Merits, at pp. 4 and 5, misrepresents the holding of Baker v. State, 431 So.2d 263 (Fla. 5th DCA 1983), by quoting a passage from Judge Cowart's opinion concurring in part and dissenting in part as though it were the holding of the court. The Fifth District's actual holding in Baker supports Petitioner's argument that aggravated assault was a lesser included offense to the armed robbery alleged in the information:

We agree with the defendant that only one mandatory three-year minimum provision can be applied to him (for the more serious offense) on the facts here. The aggravated assault charged in Count I was a necessarily lesser included offense of the armed robbery charged in Count II. Thus, under State v. Monroe, 406 So.2d 1115 (Fla. 1981) any separate sentence for Count I is improper. See also State v. Gibson, No. 61,325 (Fla. February 17, 1983).

Id., 431 So.2d at 263-264 (emphasis added).

Respectfully submitted,

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Office of the Attorney General, Park Trammell Bldg. 8th Floor, 1313 Tampa Street, Tampa, FL 33602, this 10th day of April, 1984

Paul C. Helm

PAUL C. HELM

PCH:rkm