IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 65,445

JEFFREY AMES,

Respondent.

REPLY BRIEF OF PETITIONER ON THE MERITS

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PRELIMINARY STATEMENT

As before petitioner, the State of Florida, the prosecuting authority below and appellee in Ames v. State, 449 So.2d 826 (Fla. 1st DCA 1984), will be referred to as "the State." Respondent, Jeffrey Marshall Ames, the criminal defendant and appellant below, will be referred to as "respondent."

No references to the three-volume record on appeal will be necessary.

All emphasis will be supplied by the State unless indicated.

STATEMENT OF THE CASE AND FACTS

The State stands by the statement of the case and facts provided in its initial brief.

ISSUE

THE FIRST DISTRICT ERRED IN HOLDING THAT THE TRIAL JUDGE, AFTER HAVING IMPOSED TWO CONCURRENT THREE-YEAR MANDATORY MINIMUM TERMS OF IMPRISONMENT BASED UPON RESPONDENT'S POSSESSION OF A FIREARM DURING THE BURGLARY AND THE ARMED ROBBERY, COULD NOT THEN IMPOSE A CONSECUTIVE THREE YEAR MANDATORY MINIMUM TERM OF IMPRISONMENT BASED UPON RESPONDENT'S POSSESSION OF A FIREARM DURING THE SUBSEQUENT SEXUAL BATTERY, BECAUSE THESE OFFENSE AROSE "FROM SEPARATE INCIDENTS OCCURING AT SEPARATE TIMES AND PLACES," THEREBY PERMITTING SUCH SENTENCINGS UNDER PALMER V. STATE, 438 So.2d 1 (Fla.1983); ALTERNATIVELY, PALMER V. STATE IS "BAD LAW" AND SHOULD BE OVERRULED.

ARGUMENT

The State has fully briefed the parameters of the above issue in its initial brief here, and in its answer brief in the companion case of Wilson v. State, 449 So.2d 822 (Fla. 1st DCA 1984), Case No. 65,446, and stands by those briefs. The State will reply here to several claims made by respondent in his answer brief in this cause:

Respondent requests that this Court not accept jurisdiction over this cause. As the State understands it, this Court, by ordering a briefing on the merits, has already accepted jurisdiction. So, respondent's request is moot.

Respondent next claims that the decision below is consistent with this Court's decision in Palmer v. State, 438 So.2d 1 (Fla. 1983), and with the decisions of the District Courts interpreting Palmer. While the decision under review may be consistent with respondent's view of Palmer v. State, and the decisions of the District Courts in Goens v. State, ___So.2d___ (Fla. 1st DCA 1984), 9 F.L.W. 1358, Suffield v. State, ___So.2d___ (Fla. 4th DCA 1984),

9 F.L.W. 1334, Warren v. State, ___So.2d___ (Fla. 3rd DCA 1984), 9 F.L.W. 1132, Pettis v. State, 448 So.2d 565 (Fla. 4th DCA 1984), Whitehead v. State, 446 So.2d 194 (Fla. 4th DCA 1984), and Sams v. State, 441 So.2d 180 (Fla. 1st DCA 1983), these decisions are inconsistent with the State's view that Palmer v. State prohibits the stacking of consecutive mandatory minimum sentences for offenses committed with a firearm during a single criminal transaction only where the offenses were committed simultaneously, and are also inconsistent with the decisions of the District Courts in Wilson v. State and, to an extent, Murray v. State, ___So.2d___ (Fla. 4th DCA 1984), 9 F.L.W. 1466. In Wilson v. State, the First District correctly determined that Palmer v. State did not prohibit the imposition of two consecutive mandatory minimum sentences upon an armed defendant who kidnapped a woman and then drove her "a short distance" before he sexually battered her, and in Murray v. State, the Fourth District correctly determined that Palmer v. State did not prohibit the imposition of two consecutive mandatory minimum sentences based upon a defendant's armed robbery and sexual battery of the victim in the course of a kidnapping. The Fourth District did not decide whether a separate consecutive mandatory minimum sentence for the kidnapping would have been proper because the trial judge imposed no such sentence, and unfortunately decided that a separate consecutive mandatory minimum sentence for a sexual battery committed by the defendant's accomplice was improper. The State believes that under Palmer v. State, the defendant in Murray v. State could have received separate consecutive mandatory minimum sentences for the kidnapping, the robbery, and both sexual batteries, insofar as all were committed sequentially at gunpoint. The State

also believes that Goens v. State, Suffield v. State, Warren v. State, Pettis v. State, Whitehead v. State and Sams v. State, in addition to the decision below, are incorrect statements of the law and should be designated as such.

Respondent also claims that Palmer v. State precludes him from receiving separate consecutive mandatory minimum sentences for the robbery and the sexual battery because "[c]ontrary to the State's assertion, (Petitioner's Brief p.5) the facts...show that the robbery had not concluded when respondent took the victim into the bedroom to obtain more money or jewelry" (Brief of Respondent on the Merits, p.5).[1] The State stands by its facts; as the First District noted, although the victim offered respondent jewelry in her bedroom, respondent rejected the offer and raped her instead. More significant than the disagreement of the parties over the facts themselves is respondent's implicit attempt, by arguing that the crimes occured simultaneously in an obvious effort to fit one of the State'e interpretations of Palmer v. State, to benefit from the alleged fact that the robbery had not concluded before the rape began! This attempt symbolizes respondent's fundamentally fallacious belief that the legislative purpose in enacting §775.087(2) was to protect the criminal as well as the victim. Such cannot have been

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1 Emphasis in original.

the case. See §960.02, Fla.Stat.

Respondent finally claims that the State is illicitly seeking to "trash" Palmer v. State, "although the ink has barely dried on the pages of the Southern Reporter", with "the same arguments" it made in Palmer, as though the defense bar would refrain from doing exactly the same thing regarding a decision it honestly believed incorrect (Brief of Respondent on the Merits, pp. 6-7). When a court has gone wrong, it should be put right. Cf Brown v. Board of Education, 347 U.S. 483 (1954), overruling Plessy v. Ferguson, 163 U.S. 537 (1896). This Court will note two things. First, respondent relies on the foregoing rhetoric in lieu of addressing the inherent shortcomings of Palmer v. State pointed out by the State in its initial brief, which is rather revealing. Second, the arguments the State has made and will make here are largely distinct from those it tendered in Palmer v. State. Since Palmer, this Court has correctly repudiated, in the context of when a defendant may receive separate consecutive sentences for distinct offenses committed in the course of a single criminal episode, the notorious "single transaction rule", see e.g. Scott v. State, ___So.2d___ (Fla. 1984), 9 F.L.W. 209, State v. Thomas Baker, ___So.2d___ (Fla. 1984), 9 F.L.W. 209, State v. Gibson, ___So.2d___ (Fla.1984), 9 F.L.W. 234, and State v. Charles L. Baker, ___So.2d___ (Fla. 1984), 9 F.L.W. 282. Yet, Palmer v. State and its progeny essentially continue this rule in the context of when a defendant may receive separate consecutive mandatory minimum sentences for possessing a firearm while committing such offenses, notwithstanding respondent's assertion to the contrary. The State would submit that there is no legal or logical rationale

for such an inconsistent approach either under the unamended §775.021(4), Fla.Stat. interpreted in the aforecited cases, or under the amended version of the same statute. Should the Court disagree with regards to the old statute, i.e. the one at issue here and in Wilson v. State, the State would alternatively argue that the new statute, at least, makes it crystal clear that the "single transaction rule" is under all circumstances a dead letter in this state, and ask the Court to limit Palmer v. State accordingly.

CONCLUSION

WHEREFORE, the State again moves that the sentencing decision of the First District be REVERSED and VACATED and this cause remanded with directions that the sentencing decision of the trial judge be REINSTATED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been forwarded to Mr. P. Douglas Brinkmeyer, Assistant Public Defender, Post Office Box 671, Tallahassee, FL 32302, by hand deliver this 23rd day of July, 1984.

John W. Tiedemann
Assistant Attorney General