

IN THE SUPREME COURT OF FLORIDA

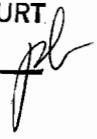
FILED

S'D J. WHITE

AUG 31 1984 ✓

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk



WILLIAM FREDERICK, JR.,)
)
Petitioner,)
)
vs.)
)
STATE OF FLORIDA,)
)
Respondent.)

CASE NO. 65,534

PETITIONER'S REPLY BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

BRYNN NEWTON
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, FL 32014-6183
(904) 252-3367

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE NUMBER</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
ARGUMENT	
IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT PETITIONER'S PROBATION REVOCATION WAS IMPROPERLY BASED UPON A CON- VICTION FOR BURGLARY WHERE THE BURGLARY INFORMATION ALLEGED BUT THE EVIDENCE FAILED TO PROVE AN INTENT TO COMMIT A SPECIFIC OFFENSE.	1
CONCLUSION	3
CERTIFICATE OF SERVICE	3

TABLE OF CITATIONS

PAGE NUMBER

CASES CITED:

Bennett v. State,
438 So. 2d 1034 (Fla. 2d DCA 1983)

1

State v. Waters,
436 So. 2d 66 (Fla. 1983)

1

T. L. J. v. State,
449 So. 2d 1008 (Fla. 2d DCA 1984)

1

ARGUMENT

IN REPLY TO THE STATE AND IN
SUPPORT OF THE CONTENTION THAT
PETITIONER'S PROBATION REVOCATION
WAS IMPROPERLY BASED UPON A CON-
VICTION FOR BURGLARY WHERE THE
BURGLARY INFORMATION ALLEGED BUT
THE EVIDENCE FAILED TO PROVE AN
INTENT TO COMMIT A SPECIFIC
OFFENSE.

Preliminary to discussion of the issue of how to resolve the conflict between the District Court's decision in this case and the Second District Court of Appeal's decisions in T. L. J. v. State, 449 So. 2d 1008 (Fla. 2d DCA 1984), and Bennett v. State, 438 So. 2d 1034 (Fla. 2d DCA 1983), Appellee has suggested that the evidence at Petitioner's trial for burglary was sufficient to establish his intent to commit theft, as charged in the information. Respondent suggests that the facts that Petitioner very quietly tried the doorknobs of the complainant's bedroom and that the complainant's valuables were kept in that room are enough to establish proof of the intent to commit theft. Respondent also argues that intent to commit any other crimes had been negated. Were this true, then Bennett would not be applicable to this case, because the Second District Court in that case apparently found that the intent to commit the specified offense is proved where stealth is shown and the intent to commit any other offense is ruled out by the evidence, and distinguished the facts in Bennett from those in State v. Waters, 436 So. 2d 66 (Fla. 1983), wherein an attempt to gain entry to a padlocked storeroom could have only been made with the intent to commit theft. In this case, entry was sought to an occupied room, and when he was apprehended outside the house, Petitioner's pants were found to be unzipped.

(CR 41, 51, 52, 53, 59) There was insufficient evidence to convince the trier of fact that Petitioner intended to commit sexual battery as charged in the burglary information, and he was acquitted of having that intent.

(CR 88) The fact that the evidence did not prove beyond a reasonable doubt any other intended offense, however, does not raise the trial court's "speculation" as to why Petitioner did not take anything from the house to sufficient evidence to find the intent to commit theft. (CR 91)

CONCLUSION

For the reasons expressed herein and in Petitioner's Brief on the Merits, Petitioner respectfully requests that this Honorable Court reverse the Fifth District Court of Appeal's decision herein, vacate the trial court's order revoking Petitioner's probation, and remand this cause to the trial court with directions that Petitioner's probation be reinstated.

Respectfully submitted,

JAMES B. GIBSON, PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



BRYNN NEWTON, ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida 32014-6183
904-252-3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Daytona Beach, Florida 32014; and to Mr. William Frederick, Jr., Route 8 Box 200, Daytona Beach, Florida 32014, by mail, this 30th day of August, 1984.



ATTORNEY