

IN THE SUPREME COURT OF FLORIDA
CASE NO. 65,576

FILED
SID J. WHITE
JUL 30 1984
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

PAUL RANDOLPH HAYDEN,
Petitioner,

vs.

THE STATE OF FLORIDA,
Respondent.

* * * * *

ON PETITION FOR DISCRETIONARY REVIEW

* * * * *

BRIEF OF RESPONDENT ON JURISDICTION

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INTRODUCTION

Petitioner, Paul Randolph Hayden, was the appellant in the District Court of Appeal and the defendant in the trial court. Respondent, the State of Florida, was the appellee in the District Court of Appeal and the prosecution in the trial court. The parties will be referred to as they appear before this court. The symbol "A" will be used to refer to the Petitioner's Appendix. All emphasis has been supplied unless the contrary is indicated.

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case as being a substantially true and correct account of the proceedings below with such additions and exceptions as are noted in the argument portion of this brief.

STATEMENT OF THE FACTS

Respondent accepts Petitioner's Statement of the Facts as being a substantially true and correct account of the proceedings below with such additions and exceptions as are noted in the argument portion of this brief.

QUESTION PRESENTED

WHETHER THIS COURT SHOULD DECLINE TO
EXERCISE DISCRETIONARY JURISDICTION
OVER THE INSTANT CASE? (RESTATED).

ARGUMENT

THIS COURT SHOULD DECLINE TO EXERCISE
DISCRETIONARY JURISDICTION OVER THIS
CASE. (RESTATED).

The Third District Court of Appeal affirmed Petitioner's conviction and sentence in the cause sub judice and held that "for the purpose of the reclassification statute (footnote omitted), which enhances a felony by one degree where a firearm is used, a defendant charged with murder by use of a firearm is also charged with the lesser included felonies of the murder charge". (A. 1-2). Thus, it was held that the reclassification statute was properly applied in the instant case. The district court adopted the rationale of Miller v. State, 438 So.2d 83 (Fla. 4th DCA 1983) in reaching its decision. The court rejected the reasoning of both Smith v. State, 445 So.2d 1050 (Fla. 1st DCA 1984) and Carroll v. State, 412 So.2d 972 (Fla. 1st DCA 1982), which hold that "the reclassification statute has no application where a defendant is not convicted of the felony specified in the charging document but is instead convicted of committing with a firearm any lesser included offense." (A. 2).

Respondent acknowledges that the face of the Third District's opinion in this case provides a basis upon which this Court may exercise its discretionary jurisdiction pursuant to Fla.R.App.P. 9.030(a)(2)(A)(iv). This Court is nonetheless urged to decline to exercise this jurisdiction in light of the

fact that resolution of either Miller v. State, supra, which is pending before this Court on review granted in Case No. 64,505, or Smith v. State, supra, which is pending before this Court on a certified question in Case No. 65,157, will dispose of the issue on appeal in this instant case, i.e., whether the reclassification provision of Section 775.087, Florida Statutes (1977), applies only to the offense specifically charged, or whether it also applies to a lesser offense committed with a firearm of which the defendant is convicted. Respondent further submits that the instant case is appropriate for summary affirmance should review be granted based upon the sound reasoning of the Third District in its opinion in the instant case and the reasoning in Miller v. State, supra, which was adopted by the Third District.

CONCLUSION

Based upon the foregoing argument and citations of authority, the Respondent would respectfully urge that the Petitioner's petition for discretionary review be denied.

Respectfully submitted,

JIM SMITH



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON JURISDICTION was furnished by mail to Karen M. Gottlieb, Assistant Public Defender, Public Defender's Office, 1351 N.W. 12 Street, Miami, Florida, 33125, on this 26 day of July, 1984.



JULIE S. THORNTON
Assistant Attorney General

/mj