

IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,576

PAUL RANDOLPH HAYDEN,
Petitioner,

vs.

THE STATE OF FLORIDA,
Respondent.

FILED

SID J. WHITE

JAN 29 1985

CLERK, SUPREME COURT

By: _____
Chief Deputy Clerk

* * * * *

ON DISCRETIONARY REVIEW

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BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

Petitioner, Paul Randolph Hayden, was the defendant at the trial court level and the appellant in the District Court of Appeal of Florida, Third District. Respondent, the State of Florida, was the prosecution at the trial level and the appellee in the district court. The symbol "A" will refer to the Appendix to Petitioner's brief. The symbol "M" will be utilized to designate the motion for post-conviction relief. The symbol "O" will be used to designate the order entered in the lower court. 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 accurate account of the proceedings below, with such additions and exceptions as are set forth in the argument portion of this brief.

STATEMENT OF THE FACTS

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

QUESTION PRESENTED

WHETHER THE DISTRICT COURT OF
APPEAL CORRECTLY HELD THAT THE
RECLASSIFICATION PROVISION OF
SECTION 775.087, FLORIDA STATUTES,
APPLIES TO LESSER INCLUDED OFFENSES
OF THE OFFENSE CHARGED?

ARGUMENT

THE DISTRICT COURT OF APPEAL CORRECTLY HELD THAT THE RECLASSIFICATION PROVISION OF SECTION 775.087, FLORIDA STATUTES, APPLIES TO LESSER INCLUDED OFFENSES OF THE OFFENSE CHARGED?

Since this Court accepted jurisdiction in the present case on the basis of conflict between the decision of the District Court of Appeal, Third District, in Hayden v. State, ___ So.2d ___, Case No. 83-2828 (Fla. 3d DCA June 5, 1984)[F.L.W. 1227], (A.1-2), and the decision of the First District Court of Appeal in Carroll v. State, 412 So.2d 972 (Fla. 1st DCA 1982), this Court has rendered a decision which resolves the conflict and dispenses with the question presented by the Petitioner sub judice. In Miller v. State, ___ So.2d ___, Case No. 64,505 (Fla. December 12, 1984)[9 F.L.W. 506], this Court held that the reclassification provisions of Section 775.087(1) Florida Statutes (1981), do apply where the defendant is not convicted of the offense charged in the information or indictment, but is convicted of a lesser included offense. In so doing, this Court approved of the decision of the Fourth District, in Miller v. State, 438 So.2d 83 (Fla. 4th DCA 1983).

The Third District Court of Appeal, therefore, reached the correct decision in Hayden v. State, supra, by adopting

the rationale of Miller v. State, 438 So.2d 83 (Fla. 4th DCA), and holding that the reclassification statute applies 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.

Nevertheless, petitioner requests this Court to reconsider the Miller decision. It is abundantly clear, however, that this Court rendered a legally sound and correct decision in Miller, and the decision should stand. In §775.087(1), the legislature evidenced its intent to punish more severely those who possess a firearm during the commission of a felony. The statute "provides for reclassification of a felony to a higher degree where a weapon or firearm was used and the use of the weapon has not already resulted in the offense being upgraded to a higher degree." Blanton v. State, 388 So.2d 1271, 1274 (4th DCA 1980). As recognized in Miller v. State, 438 So.2d 83, 85 (Fla. 4th DCA 1983), "Section 775.087(1) ... reflects the considered response of the Legislature to the violence and tragedy which so often accompany the use of guns and other weapons in the commission of crime." With this purpose in mind, it is clear that this Court properly determined that the reclassification provision of §775.087(1) applies where the defendant is not convicted of the offense expressly charged in the information or indictment, but is convicted of a lesser included offense.

In State v. Wentworth, 185 So. 357, 360 (Fla. 1938),
the court stated:

In statutory construction, the legislative intent is the pole star by which the courts must be guided, even though it may appear to contradict the strict letter of the statute. No literal interpretation should be given that leads to an unreasonable conclusion or purpose not designated by the law-makers.

In addition, it is a "basic rule of statutory construction that a statute should not be construed so as to bring unreasonable or absurd consequences when, considered as a whole, the statute is fairly subject to another construction that will aid in accomplishing the manifest intent and purposes designed." Leach v. State, 293 So.2d 77, 78 (Fla. 1st DCA 1974). See also, State ex rel. Register v. Safer, 368 So.2d 62, 624.

The State would submit that the Fourth District, in Miller v. State, was entirely correct in stating that Petitioner's contention that only those offenses charged in the information, and not those impliedly charged as lesser included offenses, are subject to reclassification under §775.087(1), is a "hyper-technical construction of the term 'charged,' because it effectively subverts the legislative policy embodied in the reclassification statute." A charge of a greater offense necessarily includes a charge of the

lesser included offenses. Miller, supra at 84. Thus an indictment or information that charges murder in the second degree includes a charge of manslaughter. Holloman v. State, 191 So. 36, 37 (Fla. 1939).

In light of the purpose of Section 775.087(1) which is to enhance the penalty of those who possess a firearm during a felony and considering the fact that where a person is "charged" with a crime he is necessarily also "charged" with the lesser included offense of the greater charge, it is abundantly clear that "the phrase 'charged with a felony,' as used in Section 775.087(1), encompasses felonies which are impliedly charged as necessarily included lesser offenses and attempts." Miller, supra at 85. Respondent, therefore, urges this Court to affirm the Third District Court of Appeal's decision in the instant case based upon this Court's recent opinion in the Miller case.

CONCLUSION

Based upon the foregoing arguments and citations of authority, Respondent respectfully submits that the judgment and sentence imposed by the trial court and the decision of the district court of appeal should clearly be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON THE MERITS was furnished by mail to KAREN M. GOTTLIEB, 1351 N.W. 12th Street, Miami, Florida 33125, on this 25 day of January, 1985.



JULIE S. THORNTON
Assistant Attorney General

/vbm