

IN THE SUPREME COURT OF THE STATE OF FLORIDA

PHILLIP ATKINS, :
Appellant, :
vs. :
STATE OF FLORIDA, :
Appellee. :

65,974
CASE NO. ~~61,851~~

FILED
SID J. WHITE
FEB 13 1985
CLERK SUPREME COURT
By *[Signature]*
Chief Deputy Clerk

REPLY BRIEF OF APPELLANT

ON APPEAL FROM THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT IN AND FOR
POLK COUNTY, FLORIDA

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PRELIMINARY STATEMENT

References to the record of Appellant's trial will be made by the notation (R-XX). References to the resentencing hearing will be made by the notation (T2-XX).

POINT ON APPEAL

POINT I

WHETHER THE TRIAL JUDGE PROPERLY REWEIGHED AND REEVALUATED AGGRAVATING AND MITIGATING CIRCUMSTANCES IN IMPOSING THE DEATH PENALTY.

POINT I

ARGUMENT

WHETHER THE TRIAL JUDGE PROPERLY REWEIGHED AND REEVALUATED AGGRAVATING AND MITIGATING CIRCUMSTANCES IN IMPOSING THE DEATH PENALTY.

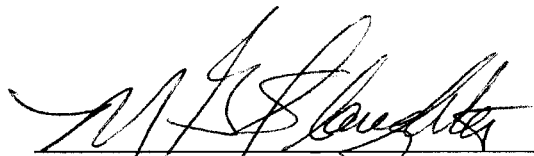
Appellant would first submit that he is unable to understand the thrust of the State's argument. It would seem to be that the State agrees with the cases cited by Appellant, but thinks that they are irrelevant because there are factual differences between the instant case and the cases cited by Appellant. Appellant would agree that this is true, but would further submit that it is an extremely rare occurrence when two (2) cases are factually identical. The variety of human activity is so far-ranging that we are constantly confronted with new situations. Were this not true, there would probably only have been about one-hundred (100) novels written in the world's literature.

However, the foundation of our jurisprudence, the common law, and the principle of stare decisis, are based upon the theorem, that there are rules by law that are applicable to a wide variety of factual situations. If this were not true, the National Reporter System would be of no value.

Appellant asserts that the law cited and argued in his initial brief is relevant and on point. Appellant can only conclude that the State is following the adage that "if the law is against you argue the facts".

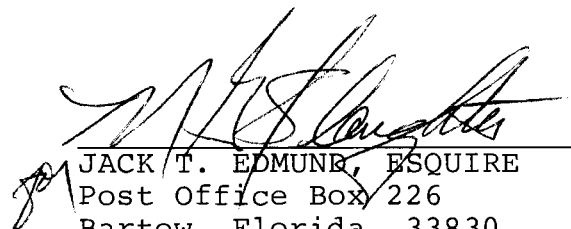
CONCLUSION

The death sentence imposed in this case should be set aside because Appellant is not within the class of people, nor is the offense within the category that the legislature intended to remedy by enacting the death penalty. The trial court did not properly reweigh the circumstances.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to Honorable Jim Smith, Attorney General, Park Trammell Building, Room 804, 1313 Tampa Street, Tampa, Florida 33602, by U. S. Mail, this 8th day of February, A. D., 1985.


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