

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
 Petitioner,
 vs.
 WILLIAM D. JOHNSON,
 Respondent.


CASE NO. 66,371

FILED

SID. J. WHITE

MAR 14 1985

CLERK, SUPREME COURT

By  Chief Deputy Clerk

PETITIONER'S REPLY BRIEF ON THE MERITS

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ARGUMENT

"Double jeopardy" encompasses two types of problems: successive prosecution, and multiple punishment for a single offense. While the former is more-or-less recognizable, the latter is not. Petitioner strongly maintains that the concept of a "fundamental" double jeopardy violation does not, to the average American, involve the technical contortions now involved in a legalistic double jeopardy analysis. To allow double jeopardy "errors" to be raised at any time as "fundamental" would create considerable confusion and wasted judicial resources, especially in the area of multiple punishment. While alleged successive prosecutions such as Chapman v. State¹ or the case sub judice occur relatively infrequently, "multiple punishment" cases occur on an every day basis. These cases, such as felony-murder, do not involve any close-to-the-heart-of-every-American type fundamental rights, only legal argument.

Petitioner respectfully urges that technical double jeopardy rights are personal in nature, and can be waived. Truly fundamental errors can be reached on an ineffective assistance basis, and corrected in an appropriate fashion. Chapman v. State, 442 So.2d 1024 (Fla. 5th DCA 1984). By this method, the correct result can be reached, see Chapman, 442 So. 2d 1024, as opposed to releasing a defendant entirely. Further, the courts (and the public) are protected against a constant deluge of multiple-punishment claims as the law continues to

¹ 389 So.2d 1065 (Fla. 5th DCA 1980)

change, since counsel would not be "ineffective" based on the law at time of trial.

In sum, there is nothing "fundamental" in this case² or in the vast majority of double jeopardy claims. There is no need to permit all double jeopardy to be raised at any time, since those where fundamental rights are truly infringed can be reached by other means. Virtually all jurisdictions find waiver where double jeopardy claims and Florida should do the same; this can of worms is best left alone.

² For perspective on the technical nature of the claim here, compare, e.g., Brown v. State, 10 F.L.W. 438 (Fla. 1st DCA, February 18, 1985).

CONCLUSION

Based on the arguments and authorities presented herein, petitioner respectfully prays this honorable court reverse the decision of the District Court of Appeal of the State of Florida, Fifth District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by mail to Mr. Robert S. Hobbs, 725 E. Kennedy Boulevard, Tampa, Florida 33602, this 13th day of March, 1985.

Ellen D. Phillips

Of Counsel
Ellen D. Phillips