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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

ERNESTO SUAREZ

Respondent.

CASE No. 66, 789

**FILED**  
SID J. WHITE  
APR 25 1985  
CLERK, SUPREME COURT.  
By [Signature]  
Chief Deputy Clerk

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

BRIEF OF RESPONDENT ON THE MERITS

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TENTH JUDICIAL CIRCUIT

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## SUMMARY OF ARGUMENT

The prohibition of stacking minimum mandatory sentences in consecutive sentences for use of a firearm arising from a single criminal episode as set forth in Palmer v. State, 438 So.2d 1 (Fla.1983) is applicable to sentences under the new sentencing guidelines. Though parole is no longer available, the minimum mandatory sentence statute also precludes suspension, deferment and withholding of adjudication and sentence. The minimum mandatory sentence also precludes application of statutory gain time. Such considerations are applicable under the new sentencing guidelines, therefore, they make Palmer still applicable without parole consideration.

CERTIFIED QUESTION

IS THE PROHIBITION AGAINST CONSECUTIVE  
MANDATORY MINIMUM SENTENCES ARISING OUT  
OF ONE CRIMINAL EPISODE AS ESTABLISHED  
BY PALMER V. STATE, 438 So.2d 1 (Fla.1983),  
OPERATIVE WITH RESPECT TO A DEFENDANT  
SENTENCED UNDER THE GUIDELINES?

The Second District Court of Appeals found the facts in the instant case to indicate that Respondent, ERNESTO SUAREZ, was convicted of three armed robberies arising out of one criminal episode. Based upon this Honorable Court's ruling in Palmer v. State, 438 So.2d 1 (Fla.1983) (improper to stack minimum mandatory sentences arising from a single criminal episode), that Court reversed the consecutive (stacked) minimum mandatory sentences and remanded for correction. Suarez v. State, \_\_\_ So.2d \_\_\_ 10 FLW 604 (Fla.2d DCA opinion filed March 6, 1985).

Subsequent to that ruling, the Second District Court of Appeals commented in dicta regarding the application of the Palmer principle to guideline sentences. That Court concluded the decision by certifying the above stated question to this Court as a question of great public importance. The question before this Honorable Court in the instant case is, in essence, under the sentencing guidelines does the Palmer principle still apply to sentencing?

Under the new sentencing guidelines parole is not available. §921.001(4)(2), Fla.Stat. (1984). Parole consider-

ations are therefore no longer relevant under the sentencing guidelines to the applicability of the Palmer principle. Such a minimum mandatory sentence does, however, also prevent suspension, deferment and withholding adjudication and sentence. Further, the minimum mandatory sentence prevents application of statutory gain time for a specified period. §775.087(2)(b), Fla.Stat.(1983). These considerations are applicable under the guidelines and are therefore relevant and sufficient to uphold applicability of the Palmer principle under the sentencing guidelines.

CONCLUSION

Based upon the cases cited and arguments presented herein, Respondent respectfully requests this Honorable Court affirm Palmer v. State, 438 So.2d 1 (Fla.1983) as applicable under the new sentencing guidelines.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Office of the Attorney General, Park Trammell Building, Eighth Floor, 1313 Tampa Street, Tampa, Florida, 33602, this 23<sup>rd</sup> day of April, 1985.

  
JOHN T. KILCREASE, Jr.