

IN THE SUPREME COURT OF FLORIDA

CHARLES HAYWOOD,  
Petitioner,  
v.  
STATE OF FLORIDA,  
Respondent.

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CASE NO. 66,994

RESPONDENT'S ANSWER BRIEF ON THE MERITS

JIM SMITH  
Attorney General  
Tallahassee, Florida 32301

ROBERT S. JAEGER  
Assistant Attorney General  
111 Georgia Avenue, Suite 204  
West Palm Beach, Florida 33401  
Telephone (305) 837-5062  
Counsel for Respondent

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TABLE OF CONTENTS

	<u>PAGE</u>
LIST OF CITATIONS	i
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
POINT ON APPEAL	3
SUMMARY OF THE ARGUMENT	4
ARGUMENT	
WHEN A DEFENDANT IS CONVICTED OF SECOND DEGREE MURDER WITH A FIREARM, IT IS NOT IMPROPER DOUBLE ENHANCEMENT OF SENTENCE TO RECLASSIFY THE OF- FENSE FROM A FIRST-DEGREE FELONY TO A LIFE FELONY AND TO ALSO IMPOSE A THREE-YEAR MANDATORY MINIMUM TERM OF IMPRISONMENT	5-6
CONCLUSION	7
CERTIFICATE OF SERVICE	7

LIST OF CITATIONS

CASE

PAGE

Haywood v. State,  
466 So.2d 424, 425-426 (Fla. 4th DCA 1985)

2, 6

State v. Whitehead,  
472 So.2d 730 (Fla. 1985)

5

OTHER AUTHORITY

Florida Statute §775.087

2, 4, 5

PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Seventeenth Judicial Circuit, in and for Broward County, Florida, and the Appellant in the District Court of Appeal, Fourth District. Respondent was the prosecution and Appellee in the lower courts. In the brief, the parties will be referred to as they appear before this Court.

The symbol "R" will denote record on appeal.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts with the following clarification:

The Fourth District Court of Appeals held that Fla. Stat. §775.087 establishes two independent enhancements, not intended as alternatives, which in the appropriate case can both apply. Haywood v. State, 466 So.2d 424, at 425-426 (Fla. 4th DCA 1985).

Notice of Discretionary Review was filed May 2, 1985 by Petitioner.

POINT ON APPEAL

WHETHER, WHEN A DEFENDANT IS CONVICTED OF SECOND DEGREE MURDER WITH A FIREARM, IT IS IMPROPER DOUBLE ENHANCEMENT OF SENTENCE TO RECLASSIFY THE OFFENSE FROM A FIRST-DEGREE FELONY TO A LIFE FELONY AND TO ALSO IMPOSE A THREE-YEAR MANDATORY MINIMUM TERM OF IMPRISONMENT?

SUMMARY OF THE ARGUMENT

Florida Statute Section 775.087 subsections (1) and (2) are not mutually exclusive. Different purposes are served by the two subsections, which do not necessarily deal with the same crimes. Therefore, both subsections were correctly followed by the trial court whose sentence was affirmed by the District Court of Appeal.

ARGUMENT

WHEN A DEFENDANT IS CONVICTED OF SECOND DEGREE MURDER WITH A FIREARM, IT IS NOT IMPROPER DOUBLE ENHANCEMENT OF SENTENCE TO RECLASSIFY THE OFFENSE FROM A FIRST-DEGREE FELONY TO A LIFE FELONY AND TO ALSO IMPOSE A THREE-YEAR MANDATORY MINIMUM TERM OF IMPRISONMENT.

This Honorable Court recently disposed of this issue in favor of Respondent in a case which presented the identical question of law. State v. Whitehead, 472 So.2d 730 (Fla. 1985).

In the opinion in that case, which Appellant has apparently overlooked, this Court held that Florida Statute §775.087(1), which provides that when a person commits a felony with a firearm, except in those offenses in which the use of a firearm is an essential element, his felony is to be reclassified one category higher, and Florida Statute §775.087(2), which provides that when a person commits one or more enumerated crimes while possessing a firearm he is required to serve three years before becoming eligible for parole, are not mutually exclusive.

The opinion distinguishes the statutory purposes. The former is intended to increase the severity of the punishment when the defendant chooses to carry, display, use, threaten or attempt to use a firearm in committing a felony, while the latter is to ensure that the defendant will serve at least three years of his sentence, whatever its length, before he can be considered for parole, if he possesses a firearm in committing one of the felonies listed in the statute. Ibid, 732.

This Court found that as the legislature has provided both these subsections, both are to be followed as there has been no indication from the legislature that the subsections are an either/or proposition. Ibid, 732.



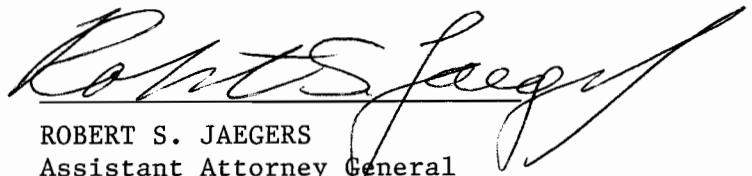
This was the same conclusion reached by the Fourth District in its opinion below, where it stated, "[t]hese are two independent enhancements, not intended as alternatives, which in the appropriate case can both apply." Haywood v. State, 466 So.2d 424, at 425-426 (Fla. 4th DCA 1985).

CONCLUSION

In light of this Court's opinion in State v. Whitehead, supra, the judgement and sentence of the trial court, as affirmed by the Fourth District Court of Appeals, should be approved.

Respectfully submitted,

JIM SMITH  
Attorney General  
Tallahassee, Florida 32301

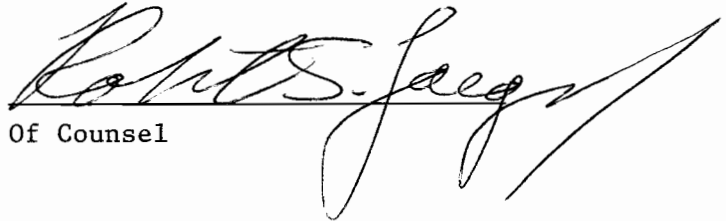


ROBERT S. JAEGER  
Assistant Attorney General  
111 Georgia Avenue - Suite 204  
West Palm Beach, Florida 33401  
Telephone (305) 837-5062

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Answer Brief on the Merits has been furnished, by courier delivery, to ALLEN J. DeWEESE, ESQUIRE, Assistant Public Defender, 15th Judicial Circuit of Florida, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401, this 17th day of September, 1985.



Of Counsel