

IN THE SUPREME COURT OF FLORIDA

LOUIS PINA,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)

CASE NO. 67,014
and
CASE NO. 67,105

FILED
SID. WALLACE
JUL 18 1985
CLERK, SUPREME COURT

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

Chief Deputy Clerk

REPLY BRIEF OF PETITIONER

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ARGUMENT

ISSUE FIVE

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT
OF THE PROPOSITION THAT THE TRIAL COURT ERRED
IN IMPOSING A SENTENCING PENALTY ON PINA
BECAUSE HE UNSUCCESSFULLY EXERCISED HIS CON-
STITUTIONAL RIGHT TO STAND TRIAL

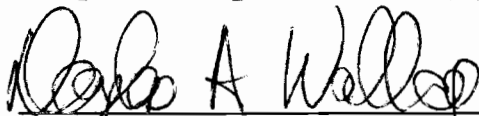
The sole issue raised in Issue Five of Petitioner's brief on the merits was whether or not the trial court erred in imposing a sentencing penalty on Pina because he unsuccessfully exercised his constitutional right to stand trial. The State argues in response that this Court should decline to review this issue on the grounds that it is unrelated to the question certified for review by the Second District Court of Appeal.

The State then continues its response with an argument directed to a completely unrelated issue, i.e., the direction by the Second District Court of Appeal that the twenty-five year mandatory minimum sentences imposed on Pina be served concurrently in accordance with the Palmer v. State, 438 So2d 1 (Fla. 1983), and Enmund v. State, 459 So2d 1160 (Fla. 2nd DCA 1984). Pina did not raise this question in his brief on the merits. The State, moreover, did not raise this point as a separate issue in its brief as required by Fla. R. App. P. 9.210. Indeed, the

State argues that no issues should be considered in connection with the review by this Court except the question certified by the Second District Court of Appeal. For these reasons, this Court should decline to consider the argument of the State directed to this unrelated issue.

Addressing briefly the merits of the unrelated issue discussed by the State, the application of the rule in Palmer is not limited to convictions of crimes which are enhanced because the criminal had in his possession a firearm pursuant to Florida Statute §775.087(2). As the Second District Court of Appeal pointed out in Enmund, this Court drew a parallel in Palmer to the statute mandating a minimum sentence of twenty-five years upon conviction of a capital felony. See, Enmund v. State, supra, at 1161. On the contrary, the Palmer rule is equally applicable to the mandatory minimum life sentence imposed for conviction of a capital felony. See, Enriquez v. State, 449 So2d 845 (Fla. 3rd DCA 1984). For the foregoing reasons, the Second District Court of Appeal correctly directed that the twenty-five year minimum mandatory sentences imposed on Pina be served concurrently.

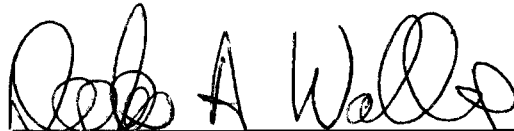
Respectfully submitted,



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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a copy of the foregoing has been mailed to Katherine Blanco, Esquire, Attorney General's Office, Park Trammel Bldg., 8th Floor, 1313 Tampa Street, Tampa, Florida, 33602, this 11th day of July, 1985.



DOUGLAS A. WALLACE