IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

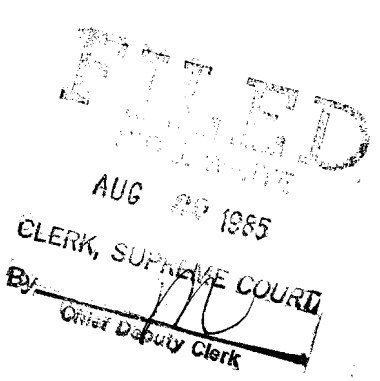
Petitioner,

v.

CASE NO.: 67,492

RONNIE E. CHAPLIN,

Respondent.
_____/



PETITIONER'S BRIEF ON JURISDICTION

JIM SMITH
ATTORNEY GENERAL

GREGORY G. COSTAS
ASSISTANT ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32301

(904) 488-0290

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS

(Continued)

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO.: 67,492

RONNIE E. CHAPLIN,

Respondent.
_____/

PRELIMINARY STATEMENT

Ronnie E. Chaplin, the appellant and criminal defendant below, will be referred to herein an Respondent. The State of Florida, the appellee and prosecution below, will be referred to herein as Petitioner.

Citations to the appendix attached hereto containing the opinion of the court below and the pertinent documentation will be indicated parenthetically as "A" with the appropriate page number(s).

The opinion of the lower court is currently reported as Chaplin v. State, Case No. BD-30 (Fla. 1st DCA August 13, 1985) (A 1-5).

STATEMENT OF THE CASE AND FACTS

Respondent was found guilty by a jury of two counts of armed robbery on October 13, 1983. He elected to be sentenced under the guidelines, and a scoresheet was prepared. The score-

sheet, containing a scoring error, indicated a recommended range of 9-12 years (the correct range should have been 7-9 years), and the trial court sentenced Respondent to a term of 12 years on each count of armed robbery, to run concurrently. Respondent did not raise the scoring error on his direct appeal of his convictions (A 2). The cause was affirmed. See Chaplin v. State, 449 So.2d 981 (Fla. 1st DCA 1984).

On September 27, 1984, Respondent filed a motion for post-conviction relief pursuant to Fla.R.Crim.P. 3.850, asserting as grounds for relief various scoring errors under the sentencing guidelines (A 6-8). On October 3, 1984, the trial court entered its order denying Respondent's motion for post-conviction relief finding that his assertions were without merit and that the matters raised by Respondent could have been raised on appeal (A 9). Thereafter, Respondent timely filed his Notice of Appeal from the trial court's denial of his motion (A 10).

By order of the lower court dated February 25, 1985, Petitioner was requested to submit a brief addressing the propriety of a Rule 3.850 motion as a vehicle for review of sentencing errors under the sentencing guidelines and the propriety of the trial court's scoring of one of Respondent's prior convictions (A 11). In compliance with said order, Respondent filed its brief wherein it conceded that the prior conviction had been improperly scored and argued that putative errors under the sentencing guidelines which could have or should have been raised on direct appeal cannot be raised in a Rule

3.850 motion. Petitioner also argued that the error herein did not result in the imposition of a sentence in excess of the legislative maximum prescribed for the offense (A 12-27).

In its opinion filed on August 13, 1985, the lower court reversed the trial court's order denying relief, vacated Respondent's sentences, and remanded the cause for resentencing (A 1,5). On August 13, 1985, Petitioner timely filed its Notice to Invoke Discretionary Jurisdiction in the lower court (A 28). Petitioner's Brief on Jurisdiction follows.

JURISDICTIONAL STATEMENT

Petitioner seeks to invoke this Court's discretionary review of the First District's decision herein pursuant to Article V, Section 3(b)(3) of the Florida Constitution and Fla.R.App.P. 9.030(a)(2)(A)(iv) on the ground that said decision is in express and direct conflict with decisions of this Court and other district courts of appeal on the same question of law.

SUMMARY OF ARGUMENT

Petitioner argues that this Court should exercise its discretionary review of the First District's decision herein pursuant to Article V, Section 3(b)(3) of the Florida Constitution and Fla.R.App.P. 9.030(a)(2)(A)(iv) because said decision, in holding that putative scoring errors under the sentencing guidelines may be raised in a Rule 3.850 motion

even though not raised on direct appeal, is in express and direct conflict with decisions of this Court and other district courts of appeal.

ARGUMENT

THE FIRST DISTRICT'S DECISION HEREIN REVERSING THE TRIAL COURT'S ORDER DENYING POST-CONVICTION RELIEF IS IN EXPRESS AND DIRECT CONFLICT WITH DECISIONS OF THIS COURT AND THE SECOND, THIRD AND FIFTH DISTRICT COURTS OF APPEAL.

The lower court, in its decision herein, found that Respondent failed to raise in his direct appeal from his conviction the putative guidelines scoring errors which he advanced as grounds for relief in his subsequent Rule 3.850 motion. Nevertheless, the lower tribunal decided that such error, though not raised on direct appeal, could properly be raised in a motion for post-conviction relief pursuant to Fla.R.Crim.P. 3.850.

This decision is patently erroneous and is irreconcilably in conflict with a plethora of this Court's decisions and decisions of the Second, Third and Fifth District Courts of Appeal holding that issues which could or should have been raised on direct appeal cannot be raised in a motion for post-conviction relief. See Ford v. Wainwright, 451 So.2d 471 (Fla. 1984); Adams v. State, 449 So.2d 819 (Fla. 1984); Booker v.

State, 441 So.2d 148 (Fla. 1983); McCrae v. Wainwright, 439 So.2d 868 (Fla. 1983); Armstrong v. State, 429 So.2d 287 (Fla. 1983); Ford v. State, 407 So.2d 907 (Fla. 1981); Hargrave v. State, 396 So.2d 1127 (Fla. 1981); Meeks v. State, 382 So.2d 673 (Fla. 1980); Adams v. State, 380 So.2d 432 (Fla. 1980); Henry v. State, 377 So.2d 692 (Fla. 1979); Graham v. State, 372 So.2d 1363 (Fla. 1979); Sullivan v. State, 372 So.2d 938 (Fla. 1979); Spinkelink v. State, 350 So.2d 85 (Fla. 1977), cert. denied, 434 U.S. 960 (1977); Wahl v. State, 460 So.2d 579 (Fla. 2d DCA 1984); Harvey v. State, 383 So.2d 770 (Fla. 3d DCA 1980); Lazarus v. State, 412 So.2d 54 (Fla. 5th DCA 1982). Evidently the lower court had previously adhered to this well-settled principle. See Watkins v. State, 413 So.2d 1275 (Fla. 1st DCA 1982); Wood v. State, 375 So.2d 10 (Fla. 1st DCA 1979) (on rehearing); Williams v. State, 371 So.2d 110 (Fla. 1st DCA 1978), cert. denied, 373 So.2d 462 (Fla. 1979). However, in the case at bar and the recent decision in Stacey v. State, 461 So.2d 1000 (Fla. 1st DCA 1984), review pending, Case No. 66,447, the First District has either overlooked or ignored, but in any event radically departed from, the controlling precedent established by this Court and recently codified in the amended version of Fla.R.Crim.P. 3.850 which provides in pertinent part:

> This rule does not authorize relief based upon grounds which could have or should have been raised at trial, and, if properly preserved, on direct appeal of the judgment and sentence.

In addition, the lower court's decisions herein and in Stacey undermine, if not totally erode, the doctrine of finality addressed in Witt v. State, 387 So.2d 922 (Fla. 1980), where this Court observed:

> The importance of finality in any justice system, including the criminal justice system, cannot be understated. It has long been recognized that, for several reasons, litigation must, at some point, come to an end. In terms of the availability of judicial resources, cases must eventually become final simply to allow effective appellate review of other cases. There is no evidence that subsequent collateral review is generally better than contemporaneous appellate review for ensuring that a conviction or sentence is just. Moreover, an absence of finality casts a cloud of tentativeness over the criminal justice system, benefiting neither the person convicted nor society as a whole. [Footnote omitted.] [Emphasis added.]

Id. at 925.

Furthermore, to the extent that the lower tribunal suggests that Respondent's sentence is illegal as a result of the scoring faux pas complained of, it is once again in error and in direct conflict with the Second District's decision in Wahl v. State, supra, a case arising under the sentencing guidelines. Speaking to the issue of collateral review in the guidelines context, the Wahl court reasoned:

> Section 921.001(5), Florida Statutes (1983), provides for appellate review of any sentence imposed outside the guidelines. If appellant had a complaint concerning the court's departure from the guidelines, he should have filed a

> direct appeal from the sentence. That portion of Florida Rule of Criminal Procedure 3.850 which authorizes the review of sentences "in excess of the maximum authorized by law," refers to a sentence which is above the legislative maximum for the prescribed crime. Skinner v. State, 366 So.2d 486 (Fla. 3d DCA 1979). Since appellant complains of an error which is not of fundamental dimension and which could have been raised by way of appeal, it cannot now be asserted in a motion for post-conviction relief. [Emphasis added.]

Id. at 580. The Second District's reasoning is particularly sound because a contrary result would have the effect of turning a recommended sentencing range set forth in a rule of procedure into a substantive sentencing cap, which in turn would amount to usurpation of the Legislature's function of establishing the maximum permissible punishment for a given offense.

Put simply, the First District's decisions herein and in Stacey stand in stark defiance of an unequivocal mandate of this Court and put into question this Court's position as the ultimate source of controlling legal authority in this State. This, of course, they cannot do. Hoffman v. Jones, 280 So.2d 431 (Fla. 1973). Moreover, the instant decision, if left uncorrected, renders nugatory this Court's unique power to promulgate rules of criminal procedure and the scope thereof since the decision effectively abrogates the provisions of Fla.R. Crim.P. 3.850 as amended. Indeed, the decision sub judice, if

afforded continued viability, cannot help but give rise to a grim specter emanating from the executions of John Spenkelink and Robert Sullivan, both of whom this Court denied collateral review of issues which could or should have been raised in their respective direct appeals. Spenkelink v. State, supra at 85; Sullivan v. State, supra at 939.

CONCLUSION

Based upon the foregoing argument and the authority cited herein, Petitioner submits that the requisite conflict between the lower court's decision herein and decisions of this Court and other district courts of appeal has been established. Moreover, Petitioner contends that the First District's decision, in view of the controlling authority on the issue, is unquestionably and irrefutably erroneous.

WHEREFORE, Petitioner, the State of Florida, respectfully moves this Honorable Court to accept jurisdiction of this cause and summarily quash the lower court's decision herein. Alternatively, Peitioner respectfully requests this Honorable Court grant conflict certiorari review over the decision below and following briefing on the merits, quash said decision.

Respectfully submitted:

JIM SMITH
ATTORNEY GENERAL

GREGORY G. COSTAS
ASSISTANT ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32301
(904) 488-0290
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Petitioner's Brief on Jurisdiction was forwarded by U.S. Mail to Ronnie E. Chaplin, #037389, Apalachee Correctional Institution, Post Office Box 699, 0-37, Sneads, Florida, 32460, on this 20th day of August, 1985.

GREGORY C. COSTAS
ASSISTANT ATTORNEY GENERAL

THE CAPITOL
TALLAHASSEE, FLORIDA 32301

(904) 488-0290

COUNSEL FOR PETITIONER