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IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,144

THE STATE OF FLORIDA,

Petitioner,

vs.

BERNARD MOSELY,

Respondent.

FILED
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 Deputy Clerk

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ON PETITION FOR DISCRETIONARY REVIEW

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BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

Petitioner was the prosecution in the trial court and appellee in the Third District Court of Appeals. Respondent was the defendant in the trial court and the appellant in the court of appeals. The parties will be referred to as they stand in this Court. References to the record will be made by using the letter "R" followed by a page cite.

STATEMENT OF THE CASE

Respondent was charged with aggravated battery. He pled guilty to that charge. He filed an appeal, attacking the legality of a portion of his sentence. The Court of appeals found in his favor, and certified to this Court the following:

"Does the application of Section 27.3455, Florida Statutes (1985) to crimes committed prior to the effective date of the statute violate the ex post facto provisions of the constitutions of the United States and of the State of Florida, or does the statute merely effect a procedural change as is permitted under State v. Jackson, 478 So.2d 1054 (Fla. 1985)?"

This court agreed to accept the case pursuant to Article V, Section 3 (b)(4), Florida Constitution.

STATEMENT OF THE FACTS

Respondent committed the crime of aggravated battery on May 18, 1985. Section 27.3455 Florida Statutes went into effect a few weeks later, on July 1, 1985. Pursuant to that statute, Respondent was ordered to serve a term of community service in lieu of paying court costs.

ISSUE ON APPEAL

WHETHER THE TRIAL COURT HAD THE
AUTHORITY TO IMPOSE COMMUNITY
SERVICE HOURS?

SUMMARY OF THE ARGUMENT

Costs imposed on convicted persons are not considered to be a "punishment" and are therefore outside the ambit of the prohibition against ex post facto laws. The trial court had the authority to impose court costs, even though the crime preceded the effective date of the cost statute.

ARGUMENT

THE TRIAL COURT HAD THE AUTHORITY TO IMPOSE COMMUNITY SERVICE HOURS.

The statute involved in this case is not punitive in nature. Its purpose is to defray court costs. As such, it may be applied retroactively.

This statute is indistinguishable from the one which was the subject of scrutiny in Ivory v. Wainwright, 393 So.2d 542 (Fla. 1980). In that case, the State sought to assess a fee against state prisoners to defray the cost of maintaining those prisoners. Payment was made a condition of parole eligibility. One of the claims made in that case was that the statute violated ex post facto principles because it served to "increase 'punishment' for prisoners whose crimes were committed prior to its effective date." Ivory, 393 So.2d at 544. This Court rejected to ex post facto argument because no "punishment" was involved.

In the case at bar, the District Court of Appeal relied upon the case of Yost v. State, 489 So.2d 131 (Fla. 5th DCA 1986). Yost bases its holding on the belief that since under this statute gain time can be lost for failure to pay court costs, an increased punishment is being imposed. This

reasoning is contrary to that used in Ivory. The prisoners in Ivory stood to lose parole eligibility if they did not pay costs. The Respondent would lose gain time if he did not pay. There is no distinction between the two, and Ivory controls this issue.

The Petitioner in this case would also urge this Court that the statute complained of merely provides a new method of collecting court costs which were previously imposed upon convicted defendants. The enactment of this statute was therefore a procedural change, sanctioned by State v. Jackson, 478 So.2d 1054 (Fla. 1985).

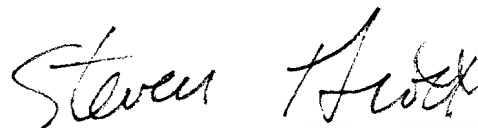
The District Court of Appeal committed error by adhering to Yost and not following Ivory.

CONCLUSION

Based on the foregoing, the decision of the District Court of Appeal should be reversed.

Respectfully submitted,

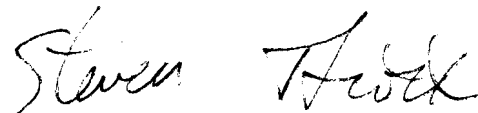
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF PETITIONER ON THE MERITS was furnished by mail to N. JOSEPH DURANT, JR., Assistant Public Defender, 1351 N. W. 12th Street, Miami, Florida 33125, on this 27th day of August, 1986.



STEVEN T. SCOTT
Assistant Attorney General

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