

IN THE SUPREME COURT
STATE OF FLORIDA

FILED

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CLERK, SUPREME COURT
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STATE OF FLORIDA,

Petitioner,

v.

BENNIE FRANK WILLIAMS,

Respondent.

CASE NO. 69,317
5th District - No. 85-1858

BENNIE FRANK WILLIAMS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 69,307
5th District - No. 85-1858

PETITIONER'S REPLY BRIEF ON THE MERITS

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NOTE: In this brief State of Florida is referred to as petitioner.
Benny Frank Williams is referred to as respondent.

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POINT ONE

IN REPLY TO RESPONDENT'S ASSERTION THAT A CONTEMPORANEOUS OBJECTION IS NOT REQUIRED TO PRESERVE FOR APPELLATE REVIEW THE ISSUE OF WHETHER THE RETROACTIVE APPLICATION OF SECTION 27.3455(1), FLORIDA STATUTES (1985), VIOLATES THE EX POST FACTO PROVISIONS OF THE UNITED STATES AND FLORIDA CONSTITUTIONS.

ARGUMENT

Relying on State v. Rhoden, 448 So.2d 1013, 1016 (Fla. 1984) and State v. Brumley, 471 So.2d 1282 (Fla. 1985), for the proposition that the purpose for the contemporaneous objection rule is not present in the sentencing process because any error can be corrected by an appellate court by simple remand to the sentencing judge, respondent suggests that no contemporaneous objection is required to preserve the issue of whether the retroactive application of section 27.3455(1), Florida Statutes (1985), violates the ex post facto provisions of the Florida and United States Constitutions. Petitioner suggests that respondent's reliance on these cases is misplaced.

The proposition that the purpose for the contemporaneous objection rule is not present in the sentencing process so that appellate review of all alleged sentencing errors is permissible despite the lack of a contemporaneous objection was rejected by this court in State v. Whitfield, 487 So.2d 1045 (Fla. 1986).

There this court held:

Sentencing errors which do not produce an illegal sentence or an unauthorized departure from the sentencing guidelines still require a contemporaneous objection if they are to be preserved for appeal.

487 So.2d at 1046.

Thus, the issue of the ex post facto application of section 27.3455(1) was not preserved. Williams v. State, 414 So.2d 509 (Fla. 1982).

POINT TWO

IN REPLY TO RESPONDENT'S ASSERTION THAT THE APPLICATION OF SECTION 27.3455, FLORIDA STATUTES (1985), TO CRIMES COMMITTED PRIOR TO THE EFFECTIVE DATE OF THE STATUTE VIOLATES THE EX POST FACTO PROVISIONS OF THE FLORIDA AND UNITED STATES CONSTITUTIONS.

Respondent's suggestion that section 27.3455(1) does not permit gain time to accrue while costs remain unpaid is erroneous. Under the plain meaning of the statute, gain time continues to be accrued by indigents and non-indigents, alike.

CONCLUSION

Based on the arguments and authorities presented herein, petitioner respectfully prays this honorable court reverse the decision of the District Court of Appeal of the State of Florida, Fifth District, vacating imposition of costs pursuant to § 27.3455(1).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Petitioner's Reply Brief on the Merits has been furnished by mail to Brynn Newton, Assistant Public Defender, and counsel for the respondent, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32014, this 19 day of November, 1986.



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