

IN THE SUPREME COURT OF FLORIDA

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STATE OF FLORIDA,

PETITIONER,

-VS-

CASE NO. 71,101

MARCUS L. BROWN,

RESPONDENT.

PETITIONER'S REPLY BRIEF

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ISSUE

THE TRIAL COURT CORRECTLY IMPOSED A  
MANDATORY SENTENCE ON APPELLANT  
PURSUANT TO THE HABITUAL OFFENDER ACT.

ARGUMENT

The issue in this case is not whether the respondent's sentence was a correct departure sentence. See Petitioner's Initial Brief, page six. The only question is whether the habitual offender statute, which mandated a life sentence be imposed, remains viable. This Court has clearly held the habitual offender act is in effect "for the purpose of extending the statutory maximum consistent with the guidelines." **Winters v. State**, 13 F.L.W. 156,157 (Fla. Feb. 25, 1988). Here the act required the trial court to impose a life sentence upon appellant, and this was noted by the assistant state attorney at sentencing. (T 193). See Section 775.084(4)(a)(1); Fla.R.Crim.P. 3.701(d)(9). The sentence imposed cannot be labeled a "departure" sentence, when both the habitual offender statute and the guideline rule recognize it as a departure sentence.

It is undisputed by respondent that mandatory sentences are valid under our sentencing guidelines. See respondent's brief, page six: "Respondent has no quarrel with the rule that if a drug mandatory minimum is greater than the guideline sentence, then

the drug minimum becomes the guideline sentence." Petitioner could not have said it better. Respondent's life sentence under the habitual offender statute became the guideline sentence, which specifically recognizes mandatory sentences. Fla.R.Crim.P. 3.701(d) (9). This rule specifically states:

9. Mandatory sentences: For those offenses having a mandatory penalty, a scoresheet should be completed and the guideline sentence calculated. If the recommended guideline sentence is less than the mandatory penalty, the mandatory sentence to be precedence.  
(Emphasis added).

This rule **is** separate from the rule (d) (11) which governs "departure" from the guidelines. Nothing could be clearer that rule (d) (9) is in harmony with the habitual offender act's mandatory life sentence. Thus, the policy of the sentencing guidelines are completely compatible with the sentence imposed by the trial court, which was a mandatory sentence. **See Allen v. State, 510 So.2d 654** (Fla.2d DCA 1987). As in **Winters**, the issue here "is not inconsistent with the guidelines."

Respondent's only argument is that his offense should not be considered an "offense having a mandatory penalty. . . ." Thus, predictably, respondent claims his offense is different than one specifically punished by a "mandatory minimum," such as a narcotic offense. This argument must fail however. First, this Court has now unequivocally reaffirmed that the habitual offender statute remains viable to extend the statutory maximum sentence,


where consistent with the guidelines. **Winters**. Here, the court extended the statutory penalty from a first-degree felony punishable by life to a mandatory life sentence. 5775.084, Fla.Stat.; §812.13(2)(b), Fla.Stat. The guideline rules specifically recognizes and approves mandatory sentences. Fla.R.Crim.P. 3.701(d) (9). Therefore, the habitual offender language applicable here and the sentencing guideline rule are completely in harmony. See **Carawan v. State**, 515 So.2d 161 (Fla.1987): **Oldham v. Rooks**, 361 So.2d 140,143 (Fla.1978). Both statutes have mutually consistent fields of operation.

The district courts have recognized that the habitual offender statute remains viable to extend the statutory maximum sentence. **Inscho v. State**, 13 F.L.W. 327 (Fla.5th DCA Feb. 4, 1988) En banc. The court in **Inscho** correctly stated habitual offender status does not constitute a reason for departure. Of course, the sentence here was not a departure sentence. Therefore, the limitations recited by respondent are not all inclusive. Respondent's brief, pages 6-7. Petitioner is not claiming that respondent's sentence was a proper departure sentence, but rather a proper mandatory sentence in conjunction with Fla.R.Crim.P. **3.701(d) (9)**. Therefore, although the trial court unnecessarily provided departure reasons, such was surplussage. The law required the trial court to impose a mandatory life sentence. The Second District's decision in **Barfield v. State**, 511 So.2d 752 (Fla.2d DCA 1987) is in error,

as was the lower court's ruling here. To remain viable, the habitual offender act requirement of mandatory sentences, approved by the sentence guidelines rule, must be upheld. See Allen v. State, 510 So.2d 654, 655 (Fla.2d DCA 1987); State v. Niencow, 505 So.2d 670,671 (Fla.5th DCA 1987). This Court should reverse the First District's erroneous ruling and reinstate the mandatory sentence imposed by the trial court.

Respectfully submitted,

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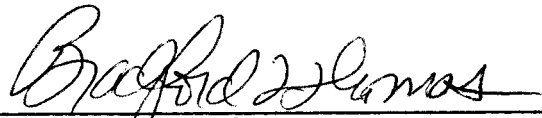
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief has been forwarded to P. Douglas Brinkmeyer, Assistant Public Defender, Post Office Box 671, Tallahassee, FL 32302, via U. S. Mail, this 16th day of March 1988.



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