

**FILED**

SID J. WHITE

OCT 8 1987

CLERK, SUPREME COURT

By

Deputy Clerk

CASE NO. 71,162

JOHN GARLAND SHULL,  
PETITIONER,

V.

RICHARD L. DUGGER,  
RESPONDENT.

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ANSWER TO STATE'S RESPONSE  
TO PETITION FOR WRIT OF HABEAS CORPUS

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The Petitioner answers as follows:

(1) The First District Court did indeed publish it's opinion, indicating that Mr. Shull was entitled to resentencing. The opinion was issued on September 1, 1987. This opinion was filed some nine (9) months after the Petitioner filed a timely Notice of Appeal. After some seven (7) months and all pleadings on appeal filed, the Petitioner filed a Writ of Mandamus to attempt to expedite the state's decision, again the motion was denied. The Petitioner predicated his Motion for Writ of Habeas Corpus on the belief that all other remedies for relief had been exhausted. The Petitioner, although having received the First District Court's opinion in his case, still felt that his only opportunity for immediate relief was the Habeas Corpus.

The Petitioner is not and would not profess to be well versed in the law or it's procedures, but would state that on all his motions from his Post-Conviction Relief Motion, to his appeal of that motion, to his Petition for Writ of Mandamus, his sole basis for relief was this Honorable Court's holding in Whitehead v. State 498 So.2nd 893(1986).

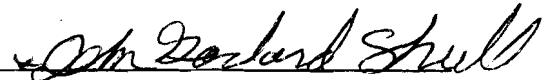
The Petitioner's sole purpose for his Habeas Petition was to expedite whatever remedy he deserved, and in essence he has accomplished this.

(2) As to the question the First DCA has certified to this Court:

(IS APPELLANT PERMITTED TO ATTACK THE LEGALITY OF HIS GUIDELINE SENTENCE DEPARTURE BY RULE 3.850 MOTION FOR POST-CONVICTION RELIEF ON THE BASIS THAT THE SOLE REASON FOR DEPARTURE HIS STATUS AS AN HABITUAL OFFENDER, ALTHOUGH VALID UNDER A LOWER APPELLATE COURT DECISION AT THE TIME IMPOSED, IS INVALID UNDER A SUBSEQUENTLY ISSUED SUPREME COURT DECISION ENUNCIATING A DIFFERENT CONSTRUCTION OF THE SENTENCING STATUTES AND SENTENCING GUIDELINES RULE?)

This question is at best ludicrous in the Petitioner's case, as the remedy prayed for in the Petitioner's Motion for Post-Conviction was not even available on direct appeal.

If this Honorable Court feels this Question has merit in the Petitioner's case, then he would pray his original Motion for Post-Conviction Relief be considered a Petition for Writ of Habeas Corpus, and any denial of the motion or it's subsequent motions be vacated and allow it to proceed on it's merits.



JOHN GARLAND SHULL  
DOC #096206  
RECEPTION & MEDICAL CTR.  
P.O. BOX 628  
LAKE BUTLER, FL. 32054

CERTIFICAT OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to ROBERT BUTTERWORTH ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, THE CAPITOL, TALLAHASSEE, FL. 32399-1050.



JOHN GARLAND SHULL,  
PETITIONER.

NOTARY PUBLIC CERTIFICATE

STATE OF FLORIDA]

ss.

COUNTY OF UNION]

SWORN AND SUBSCRIBED before me on this 6 day of OCTOBER, 1987.



NOTARY PUBLIC, STATE OF  
FLORIDA.

[SEAL]