

IN THE SUPREME COURT OF FLORIDA

JOHN GARLAND SHULL,

Petitioner,

v.

CASE NO. 71,162

RICHARD L. DUGGER,

Respondent.

_____ /

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By _____
DATE _____

RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS

The Respondent answers as follows:

(1) The First District Court of Appeal published an opinion, indicating that Mr. Shull was entitled to resentencing, on September 1, 1987, as Shull's petition indicates.

(2) The Circuit Court was not required to resentence Mr. Shull until the First District issued its mandate.

(3) Mr. Shull failed to advise this Court that a Motion for Stay of Mandate and Suggestion of Certification was timely filed in the District Court and was pending at the time he prepared his petition for habeas corpus.

(4) In fact, the First District only issued its mandate on September 29, 1987 (attached) and has certified to this Court a question of great public importance pertaining to Mr. Shull's standing to attack his sentence. (opinion attached)

(5) Habeas corpus should not be granted under these circumstances. The Circuit Court should have a fair opportunity to act pursuant to the mandate, if necessary. In fact, given the nature of the certified question and the unresolved issue of standing (or jurisdiction), it would indeed be entirely proper to stay the First District's mandate lest Mr. Shull be released prematurely.

(6) Finally, Mr. Shull is in the wrong court. If any action is to be taken by any court, it is suggested that a writ of mandamus should be sought from the First District to seek enforcement of its mandate. Habeas corpus is not the appropriate remedy.

(7) Since this response is being filed "immediately" per order of the Court, and since a question has been certified which goes to the issue of Mr. Shull's ability to petition for relief, it is requested that the mandate issued by the District Court be vacated by this Honorable Court.

Respectfully submitted,

ROBERT A. BUTTERWORTH
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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Mr. John Garland Shull, #096206, Reception and Medical Center, Post Office Box 628, Lake Butler, Florida 32054, this 1st day of October, 1987.



MARK C. MENSER
Assistant Attorney General

OF COUNSEL