IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

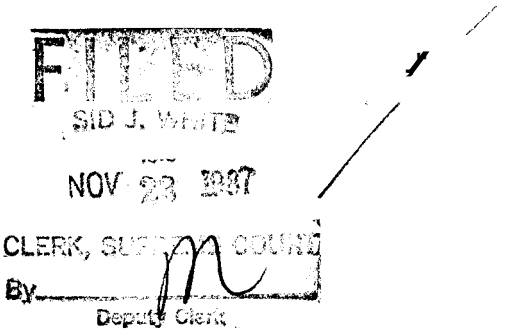
Petitioner,

v.

GEORGE BOATWRIGHT,

Respondent.

CASE NO. 71,240
DCA CASE NO. BO-13



RESPONDENT'S BRIEF ON THE MERITS

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

DAVID P. GAULDIN
SPECIAL ASSISTANT PUBLIC DEFENDER
FLORIDA BAR 8261580
POST OFFICE BOX 142
TALLAHASSEE, FLORIDA 32302
(904) 222-5774

ATTORNEY FOR RESPONDENT

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	WHETHER THE PROHIBITION AGAINST IMPOSING CONSECUTIVE MINIMUM MANDATORY SENTENCES FOR SEPARATE AND DISCRETE ACTS ARISING OUT OF ONE CRIMINAL EPISODE APPLIES TO SEXUAL BATTERY. (Petitioner's issue restated).	
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Respondent.	:	

RESPONDENT'S BRIEF ON THE MERITS

I PRELIMINARY STATEMENT

Respondent accepts petitioner's preliminary statement.

III STATEMENT OF THE CASE

Respondent accepts petitioner's statement of the case.

III STATEMENT OF THE FACTS

For purposes of the narrow issue with which this Court is concerned, respondent accepts petitioner's statement of the facts to the extent that the facts are accurately stated and relevant.

IV SUMMARY OF THE ARGUMENT

This Court has held that first degree murder is the only capital felony in the State of Florida and that sexual battery may be charged by information. As such, this Court intended State v. Enmund, *476* So.2d *165* (Fla. 1985) to apply only to first degree murder.

V ARGUMENT

ISSUE PRESENTED

WHETHER THE PROHIBITION AGAINST IMPOSING CONSECUTIVE MINIMUM MANDATORY SENTENCES FOR SEPARATE AND DISCRETE ACTS ARISING OUT OF ONE CRIMINAL EPISODE APPLIES TO SEXUAL BATTERY. (Petitioner's issue restated).

The First District Court of Appeal in its opinion filed after rehearing on September 11, 1987, correctly concluded that Murray v. State, 491 So.2d 1120 (Fla. 1986) extends this Court's prohibition against the consecutive stacking of minimum mandatory sentences arising out of one criminal episode to sexual batteries.

As petitioner seems to recognize the real issue is whether sexual battery is a capital felony even though the death penalty is no longer a possible sanction.

This question has already been answered by this Court against the petitioner. In Frederick A. R. Hevring v. State, 12 FLW 486 (Fla. 1987), this Court concluded that sexual battery is not a capital offense and may be charged by information. See also Rowe v. State, 417 So.2d 981 (Fla. 1982) which holds that murder in the first degree is the only existing capital felony in the State of Florida. See also State v. Hogan, 451 So.2d 844 (Fla. 1984), which holds that sexual battery is not punishable by death and a six member jury is permissible.

As the First District Court of Appeal correctly recognized, this Court limited its opinion in State v. Enmund,

476 So.2d 165 (Fla. 1985) to first degree murder, the only capital felony in the State of Florida.

In light of the foregoing arguments, the certified question can be answered as follows: This Court in State v. Enmund meant to restrict the scope of its holding in that decision to cases involving [first degree murder, the only capital felony in Florida].

VI CONCLUSION

Based on the foregoing arguments and authorities, this Court should answer the Florida First District Court of Appeal's certified question in the manner suggested in this brief.

Respectfully submitted,

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

DAVID P. GAULDIN
Assistant Public Defender
Florida Bar #261580
Post Office Box *142*
Tallahassee, Florida *32302*
(904) 222-5774

Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Mr. Gary L. Printy, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to respondent, Mr. George Boatwright, #B-276792, Union Correctional Institution, Post Office Box 221, Raiford, Florida, 32083, this 23rd day of November, 1987.

David P. Gauldin

DAVID P. GAULDIN