

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

GEORGE BOATWRIGHT,

Respondent.

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FILED

DEC 16 1997

CLERK, SUPREME COURT  
By *M*  
Deputy Clerk

Case No. 71,240

PETITIONER'S REPLY BRIEF ON THE MERITS

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ARGUMENT

ISSUE PRESENTED

WHETHER THE PROHIBITION AGAINST  
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BATTERY.

Boatwright argues that this Court's opinion in Heuring v. State, 12 FL.W. 486 (Fla. 1987) answers the issue presented against the Petitioner. Heuring Rowe v. State, 417 So.2d 981 (Fla. 1982) and State v. Hogan, 451 So.2d 844 (Fla. 1984) all, correctly conclude that the proclulsion of the death penalty for sexual battery on a child has eliminated the requirements for twelve member juries and charging by indictment. There is no case from this Court which holds that the 25 year minimum mandatory sentence for sexual battery on a child is no longer applicable to Mr. Boatwright. The victim in this case was five years old and the other evidence presented clearly established to separate and discreet acts of sexual battery upon this child. Therefore, the only question presented is whether the legislature has, by its silence, clearly spoken and no longer intends that this Court allow the imposition of consecutive sentences on these facts.

The only basis for concluding that separate and discreet

sentences are not permitted is in the flawed 4-3 decision in Palmer v. State, 438 So.2d 1 (Fla. 1983). This Court, in State v. Endmund, 476 So.2d 165 (Fla. 1985) refused to extend the Palmer analysis to capital felony because the legislative intent was clear. Here, the legislature has had ample opportunity to revise subsection 794.01 (Fla. 1978) and has refused to do so. This failure to act is a clear indication that the legislature has no desire to remove the 25 year minimum mandatory from sexual battery on a child. It would be a farce to conclude that the legislative attention given to child abuse and other forms of crimes against children is evidence of a legislative intent to suddenly lessen the penalty for sexual battery on a child.

Therefore, Petitioner submits that there is no prohibition against the imposition of consecutive minimum mandatory sentences for separate discreet acts of capital sexual battery given the logical interplay of subsection 794.011(2) and 775.021(4), Florida Statutes.

CONCLUSION

This Court should quash opinion below and reinstate the consecutive minimum mandatory sentences imposed below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to David P. Gauldin, Special Assistant Public Defender, Post Office Box 142, Tallahassee, Florida 32302, this 14th day of December, 1987.

  
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