

IN THE SUPREME COURT OF FLORIDA

MELISSA HENRIQUEZ,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

FILED  
FEB 22 1998  
CLEVELAND COUNTY  
By \_\_\_\_\_  
Deputy Clerk

Case No. 71,414

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

REPLY BRIEF OF PETITIONER ON MERITS

JAMES MARION MOORMAN  
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TENTH JUDICIAL CIRCUIT

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ATTORNEYS FOR PETITIONER

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## ARGUMENT

### THE ORDERING OF PAYMENTS OF COSTS BY THE TRIAL COURT WAS IMPROPER.

One of the cornerstones of our system of government is the doctrine of fundamental fairness. Requiring an individual defendant to pose objection to the imposition of costs and assessments, or to forever give up his right to challenge imposition of those costs places an unconstitutional undue burden upon an individual, and unfairly discriminates against indigent defendants who have public defender liens imposed.

The District Court's ruling would require a defendant to pose "timely" objection regarding imposition of costs. Failure to object would prohibit review of erroneous imposition even if apparent on the face of the record. However, it is unreasonable and unrealistic to expect that those standing before a sentencing judge will be aware of their right to object, let alone have knowledge of the results of a failure to so do. In fact, given the factual circumstances of this case, the convicted defendant would be placed in a position of being in conflict with her appointed counsel. (R152) Under such circumstances, she would have had the burden of objecting placed totally upon her shoulders. Even giving her credit for understanding that she did have a right to object, she then would have been without counsel in making her objection. She would be placed in a situation referred by the United States Supreme Court in Powell v. Alabama, 287 U.S. 45 68-69, 53 S.Ct. 55 (1932):

The right to be heard would be, in many cases, of little avail, if it did not comprehend the right to be heard by counsel.

A right to a due process requirement of a hearing includes a

right to a hearing "[in] a meaningful time and a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187 (1965). No convicted criminal defendant can be said to be allowed a proper determination as to the proper imposition of assessments if he is placed in a position of having to pro se object during sentencing, or to forever give up his right to challenge imposition of those assessments.

The intermediate appellate court's ruling imposes an unreasonable and unconscionable burden upon an individual: that he must represent himself at sentencing, or forever hold his peace. There has been no showing of an overwhelming state need to impose such a requirement upon an individual. In fact, such a requirement appears to be an act of vindictiveness against this Petitioner who was convicted of a lesser included crime. Ordering payment of costs at the trial court level, also subverts Article I, section 19 of the Florida Constitution for those persons who are seeking appellate relief of their convictions.

To follow the ruling of the Second District Court of Appeal is to engage in a fanciful chimera that criminal defendants will take the initiative to pose objections to imposition of assessments during a sentencing hearing, and that they should be estopped from questioning them if they do not. That ruling flies in the face of the reasoning in Jenkins v. State, 444 So.2d 947 (Fla. 1984), and must be overruled.

Respectfully submitted,

JAMES MARION MOORMAN  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy has been furnished to  
the Attorney General's Office, Park Trammell Building, Eighth  
Floor, 1313 Tampa Street, Tampa, FL 33602, by mail on this  
19<sup>th</sup> day of February, 1988.



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D. P. CHANCO