IN THE SUPREME COURT OF FLORIDA

VINCENT LORENZO ALLEN,

Petitioner,

vs. CASE NO. 71,495

STATE OF FLORIDA,

Respondent.

_____/

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

RESPONDENT'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROYALL P. TERRY, JR.
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

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RESPONDENT'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner, Vincent Lorenzo Allen, was the appellant below and will be referred to herein either as "petitioner" or by his proper name. Respondent, the State of Florida, was the appellee below and will be referred to herein either as "the state" or as "respondent".

SUMMARY OF ARGUMENT

Section 775.021(4), Fla. Stat. specifically permits either concurrent or consecutive sentencing for separate criminal offenses committed during one criminal episode. There is no specific exception in either the statutory or the case law that creates any exception to consecutive sentencing for multiple felony youthful offenders, even though the commitment to the department of corrections might exceed six years.

Petitioner's argument that consecutive sentences for a youthful offender, totalling more than six years incarceration is contrary to the legislative intent underlying passage of the statute, is based upon pure conjecture.

ARGUMENT

ISSUE

A YOUTH MAY BE SENTENCED UNDER THE YOUTHFUL OFFENDER ACT CONSECUTIVELY OR CONCURRENTLY WHENEVER SEPARATE SENTENCES MAY BE IMPOSED FOR TWO OR MORE OFFENSES. (Restated).

Respondent concedes that there is a conflict between the instant opinion of the First District Court of Appeal, based upon that court's earlier decision in Harmon v. State, 397 So.2d 1218 (Fla. 1st DCA 1981), and the 1985 opinion of the Fifth District Court of Appeal in Lane v. State, 470 So.2d 30 (Fla. 5th DCA 1985).

The Fifth District provided no rationale with its conclusion that a youthful offender must be sentenced concurrently if the sentences total more than six years, in order to comply "with the intention of the Youthful Offender Act." Respondent submits that the First District's opinion in Harmon is better reasoned in that the court declined to speculate concerning legislative intent, vis-a-vis, the Youthful Offender Act. The First District saw no reason why sentences for contemporaneous crimes, under the act, could not be imposed either consecutively or concurrently in keeping with the general law applicable to such circumstances, i.e., §775.021(4), Fla. Stat.

Section 775.021(4), Fla. Stat. reads as follows:

> "Whoever, in the course of one criminal transaction or episode, commits separate criminal offenses, upon conviction and ajudication of guilt, shall be sentenced separately for each criminal offense; and the sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial."

The language of the statute is clear and specific. The law is well-settled that should there appear a conflict in the law arising from interpretations of two different statutes, a statute announcing a specific purpose and intent always takes precedence over general references. In the case sub judice, §958.05, Fla. Stat. which pertains to the sentencing of youthful offenders under the act, contains no language prohibiting consecutive sentences for youthful offenders for separate contemporary offenses. In the instant case, appellant pled guilty to grand theft and to bail bond jumping which offenses would not appear to have arisen out of the same criminal episode. Petitioner assumes too much if he is urging upon this court that a youthful offender cannot be committed to the Department of Corrections for more than six years regardless of the number of crimes involved. Even offenses having a common root in a single criminal episode can be punished by consecutive sentences when sufficiently separate in

time and nature to justify consecutive terms. See Murray v. State, 491 So.2d 1120 (1986) which involved the crimes of sexual battery and armed robbery, both a part of the same criminal episode.

Finally, State v. Goodson, 403 So.2d 1337 (Fla. 1981), upon which petitioner relies, does not expressly hold that a person classified as a youthful offender cannot be sentenced to more than six years, for multiple offenses. The holding of that case, relative to such classification, was merely that a person found guilty of more than one felony offense may be classified as a youthful offender and that the existence of two or more contemporaneous felony convictions merely excludes the person from mandatory classification as such. Id. at 1340 Petitioner is relying upon dicta and nothing more. In Goodson, Justice Boyd, writing for this court, appeared somewhat perplexed over the proposition that a youthful offender convicted of more than one felony would go unpunished for the other felonies if he received the maximum penalty for the first felony, under the Youthful Offender Act. Petitioner wants it both ways, i.e., the benefits of classification as a youthful offender but without the responsibility of answering for each and all of his crimes. Such a holding would create a bizarre and unintended result. Petitioner has failed to make a showing that status as a youthful multiple felony offender, as an act of leniency by the trial court, entitles the offender to special or exceptional treatment

under §775.021(4), Fla. Stat. Until such time as the legislature sees fit to create such an exception for youthful multiple felony offenders under the statute, it must still apply to petitioner by virtue of its plain language. Appellant's argument constitutes little more than wishful thinking on his part. Reversal cannot be predicated upon conjecture (as to legislative intent). Sullivan v. State, 303 So.2d 632 (Fla. 1974); Jacobs v. Wainwright, 450 So.2d 200 (Fla. 1984).

CONCLUSION

The decision of the court below should be affirmed and the holding of the First District in Harmon v. State, supra, should be adopted and approved by this court.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROYALL P. TERRY, JR.
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to Judith A. Quandt, Attorney for Petitioner, 2614 Southwest 34th Street, Gainesville, Florida 32608 on this 31st day of December, 1987.

ROYALL P. TERRY, JR.
ASSISTANT ATTORNEY GENERAL

COUNSEL FOR RESPONDENT