

IN THE SUPREME COURT OF FLORIDA

---

VINCENT LORENZO ALLEN

Petitioner,

vs.

STATE OF FLORIDA

Respondent.

FILED  
JAN 10 1993

JAN 10 1993

CLERK OF THE COURT

By \_\_\_\_\_  
Deputy Clerk

---

CASE NO. 71,495

---

APPEAL FROM THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

---

PETITIONER'S REPLY BRIEF

---

FLORIDA INSTITUTIONAL LEGAL  
SERVICES, INC.

JUDITH A. QUANDT  
Attorney for Petitioner  
2614 Southwest 34th Street  
Gainesville, Florida 32608  
(904) 336-2260

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS .....	i
TABLE OF CITATIONS.....	ii
SUMMARY OF THE ARGUMENT .....	1
ARGUMENT .....	2
CERTIFICATE OF SERVICE	

TABLE OF CITATIONS

Page

Cases

Harmon v. State,  
397 So.2d 1218 (Fla. 1st DCA 1981) .....3

Jacobs v. Wainwright,  
450 So.2d 200 (Fla. 1984) .....1,4

Murray v. State,  
491 So.2d 1120 (Fla. 1986) .....1,3

State v. Goodson,  
403 So.2d 1337 (Fla. 1981) .....1,3

Sullivan v. State,  
303 So.2d 632 (Fla. 1974) .....1,4

Statutes

§775.021(4), Fla. Stat. ....1,2,3

§958.05, Fla. Stat. ....1,2,3

## SUMMARY OF THE ARGUMENT

Section 775.021, Florida Statutes, should not be applied to those classified as youthful offenders under Section 958, Florida Statutes (the Youthful Offender Act), because Section 958 prescribes the exclusive penalty for youthful offenders.

State v. Goodson, 403 So.2d 1337 (Fla. 1981) is controlling on this question and serves to clarify the proper application of the Youthful Offender Act.

Cases relied upon by respondent, Murray v. State, 491 So.2d 1120 (Fla. 1986), Sullivan v. State, 303 So.2d 632 (Fla. 1974) and Jacobs v. Wainwright, 450 So.2d 200 (Fla. 1984), are not applicable to the issue at hand.

ARGUMENT IN RESPONSE AND REBUTTAL

The respondent asserts that this court should apply Section 775.021(4) of the Florida Statutes to persons classified as youthful offenders at sentencing. However, the pertinent subsections of Section 775.021, omitted in respondent's brief direct that:

(1) The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.

(2) The provisions of this chapter are applicable to offenses defined by other statutes, unless the code otherwise provides.

\* \* \*

The foregoing language in subsections (1) and (2) must be read in pari materia with the precatory language of Section 958.05, Florida Statutes, of the Youthful Offender Act (hereinafter YOA):

If the court classifies a person a youthful offender, in lieu of other criminal penalties authorized by law, the court shall dispose of the criminal case as follows...[emphasis added].

Contrary to the assertions of the State, it is clear that the YOA is the exclusive penalty for those classified as youthful offenders since the YOA applies in lieu of section 775.021, Florida Statutes. Common sense leads one to the conclusion that if trial courts wish to impose consecutive sentences "for the

protection of society" as was approved by the First District Court of Appeal in Harmon v. State, 397 So.2d 1218 (Fla. 1st DCA 1981) they may properly decline to classify multiple offenders as youthful offenders (as is their prerogative under the YOA) and sentence the multiple offender as an adult.

Respondent's assertions notwithstanding, petitioner is not urging this Honorable Court to hold that one cannot receive consecutive sentences for multiple felonies; rather, petitioner urges this court to clarify the proper application of the YOA as explained by this Court in State v. Goodson, 403 So.2d 1337 (Fla. 1981).

Respondent's reliance on Murray v. State, 491 So.2d 1120 (Fla. 1986), as justifying consecutive terms, is not applicable to the issue at hand since the defendant in Murray was not sentenced under the YOA, and the question of whether consecutive sentences are allowed for adult offenders is not in dispute here.

Despite respondent's contention that Mr. Justice Boyd was perplexed by the decision he wrote for this Honorable Court in Goodson, it is clear former Justice Boyd and this entire Court understood, although respondent does not understand, the proper application of the YOA.

Contrary to respondent's argument, it is clear that the legislature need not create a special exception under Section 775.021(4), Florida Statutes, for youthful multiple felony offenders. A proper application of the existing statutes by the

trial courts would obviate any need for further legislative implementation.

Finally, respondent implies that Sullivan v. State, 303 So.2d 632 (Fla. 1974) and Jacobs v. Wainwright, 450 So.2d 200 (Fla. 1984) somehow involve legislative intent. Both cases concern the determination of reversible error in criminal trials and do not speak to legislative intent.