

IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA, ▪
 PETITIONER, ▪
VS. :

BOBBY JOE BURTON, :

 RESPONDENT. :

_____ :

CASE NO. 73,700

FILED
JUL 5 1989

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

RESPONDENT'S BRIEF ON THE MERITS

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Respondent would accept Petitioner's Statement of the Case and Facts.

SUMMARY OF THE ARGUMENT

This court has already answered the issues presented herein in its recent opinion in State v. Smith, Case No. 72,633 (Fla. June 22, 1989) [14 F.L.W. 308].

ARGUMENT

In State v. Smith, Case #72,633 (Fla. June 22, 1989)[14 F.L.W.

308] this court was presented with the question of:

Whether the legislature intended that the offenses of sale or delivery of a controlled substance and possession with the intent to sell that same substances should be treated as separate offenses?

This court answered this question in the affirmative.

This court also resolved the issues of:

Whether the legislature overrode Carawan v. State by enacting 88-131 §7?

and

Whether this override was to be applied retroactively?

This court held that by amending the statute the legislature had effectively overridden Carawan v. State. However, this override was not to be applied retroactively.

In as much as 88-131 §7 became effective July 1, 1988, and the date of Respondent's offense was January 2, 1987, Respondent's case must fall under the post-Carawan pre-legislative amendment status of the law. This means that Respondent can not be charged with both delivery and possession in the instant case. The decision of the Second District Court of Appeal must be affirmed.

CONCLUSION'

In light of the foregoing reasons, arguments and authorities, Respondent respectfully requests that this Honorable Court affirm the Second District Court's decision.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Katherine Blanco, Assistant Attorney General, Park Trammell Bldg., 8th Floor, 1313 Tampa Street, Tampa, Florida 33602, this 29th day of June, 1989.

RESPECTFULLY SUBMITTED,

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