

FILED 087
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SEP 24 1990
CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,475

HERBERT WHIPPLE,
Petitioner,

vs.

THE STATE OF FLORIDA,
Respondent.

ON APPLICATION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON THE MERITS

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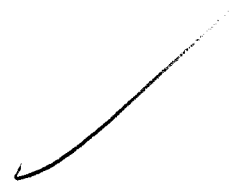


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INTRODUCTION

In this Brief, the Petitioner HERBERT WHIPPLE will be referred to as the Defendant or the Petitioner. The Respondent THE STATE OF FLORIDA will be referred to as the State or the Respondent.

The symbol "R" will refer to the record on appeal. The symbol "A" will refer to the appendix filed with the Petitioner's Brief.

STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's Statement of the Case and Facts as a generally correct statement of the proceedings below. However, the Respondent would add that the recommended guideline range for the Petitioner was seven (7) to (9) years state prison, with a permitted range of five and one-half (5 1/2) to twelve (12) years. (R.9-9A).

QUESTION PRESENTED

WHETHER POPE V. STATE SHOULD BE APPLIED
RETROACTIVELY TO SENTENCES IMPOSED PRIOR TO
APRIL 26, 1990?

SUMMARY OF ARGUMENT

Pope should not be applied retroactively to sentences imposed prior to April 26, 1990.

ARGUMENT

POPE V. STATE SHOULD NOT BE APPLIED
RETROACTIVELY TO SENTENCES IMPOSED PRIOR TO
APRIL 26, 1990.

It is the State's position that there is no discernible difference between Ree v. State, -- So.2d --, 15 F.L.W. 395 (Fla. July 19, 1990) and Pope v. State, 561 So.2d 554 (Fla. 1990). Therefore, the certified question should be answered in the negative and Pope v. State should be applied prospectively only.

CONCLUSION

Wherefore, based on the foregoing reasons and authorities cited herein, the Respondent THE STATE OF FLORIDA respectfully requests that this Court respond to the certified question in the negative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON THE MERITS was furnished by United States mail to Bennett Brummer, Public Defender, 1351 Northwest 12th Street, Miami, Florida 33125 on this 19th day of September, 1990.

Monique T. Befeler

MONIQUE T. BEFELER
Assistant Attorney General