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IN THE SUPREME COURT OF FLORIDA

CALVIN RHODES,

Petitioner,

vs. CASE NO. 76,697

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

	PAGE(S)
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	5

ISSUE

RHODES WAS GIVEN REASONABLE NOTICE AND A FAIR OPPORTUNITY TO BE HEARD PURSUANT TO THE DUE PROCESS CLAUSE OF THE FEDERAL AND STATE CONSTITUTIONS.

CONCLUSION	23
CERTIFICATE OF SERVICE	24

TABLE OF CITATIONS

CASES	PAGE(S)
Akin v. Bethea, 33 So.2d 638 (Fla. 1948)	5
Boston v. State, 411 So.2d 1345 (1st DCA), rev. denied, 418 So.2d 1278 (Fla. 1982)	23
Bozza v. United States of America, 330 U.S. 160, 67 S.Ct. 645, 91 L.Ed. 818 (1947)	12,22
Bryant v. State, 386 So.2d 237 (Fla. 1980)	8
Bull v. State, 548 So.2d 1103 (Fla. 1989)	16,17,18,21,22
D'Alessandro v. State, 360 So.2d 774 (Fla. 1978)	11,12,22
Day v. State, 15 F.L.W. D2341 (Fla. Sept. 13, 1990)	23
Fuller v. Oregon, 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974)	17,18
Gianfrancisco v. State, 509 So.2d 1331 (Fla. 2d DCA 1987)	6
Goodrich v. Thompson, 96 Fla. 327, 118 So. 60 (1928)	5
Hands v. Wainwright, 360 So.2d 783 (Fla. 1st DCA 1978)	15
In re CERTIFICATION OF JUDICIAL MANPOWER, 558 So.2d 1002 (Fla. 1990)	23

In re ORDER ON PROSECUTION OF CRIMINAL APPEALS BY THE TENTH JUDICIAL CIRCUIT PUBLIC DEFENDER, 561 So.2d 1130 (Fla. May 3, 1990) — 23

Jenkins v. State, 422 So.2d 1007 (Fla. 1st DCA 1982) — 19,20

Jenkins v. State, 444 So.2d 947 (Fla. 1984) — 18,19,20,21,22,23

Manigault v. State, 534 So.2d 856 (Fla. 1st DCA 1988) — 11

Mays v. State, 519 So.2d 618 (Fla. 1988) — 18

Morgan v. Cook, 344 So.2d 577 (Fla. 1977) — 15

Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) — 10,11,15

Rankin v. Wainwright, 351 F.S. 1306 (U.S.D.C. M.D. Fla. 1972) — 15

Sammis v. Bennett, 32 Fla. 458, 14 So. 90 (1893) — 5

Scott v. State, 369 So.2d 330 (Fla. 1979) — 7,14

Scull v. State, Case No. 73,687 (Fla. November 8, 1990) — 5,10

Sireci v. State, 399 So.2d 964 (Fla. 1981), cert. denied, 456 U.S. 984, 102 S.Ct. 2257, 72 L.Ed.2d 862 — 8

State v. Beasley, Case No. 76,102 — 1

State v. Champe, 373 So.2d 874(Fla. 1979) — 13,14

State v. Malone,
512 So.2d 832 (Fla. 1987) 6

State v. Hatten,
561 So.2d 562 (Fla. 1990) 23

State v. Strasser,
445 So.2d 322 (Fla. 1983) 22

State v. Yost,
507 So.2d 1099 (Fla. 1987) 18

Thayer v. State,
335 So.2d 815 (Fla. 1976) 16

Thompson v. State,
56 Fla. 107, 47 So. 816 (1909) 5

United States v. Cooper,
870 F.2d 586 (11th Cir. 1989) 18

United States v. Pagan,
785 F.2d 378 (2d Cir.), cert. denied,
479 U.S. 1017, 107 S.Ct. 667
93 L.Ed.2d 719 (1986) 17,18

United States v. Purcell,
715 F.2d 561 (11th Cir. 1983) 12,22

United States v. Rivera-Velez,
839 F.2d 8 (1st Cir. 1988) 18

Weaver v. Graham,
450 U.S. 24, 67 L.Ed.2d 17,
101 S.Ct. 960 (1981) 6

Wood v. State,
544 So.2d 1004 (Fla. 1989) 18

Wright v. Wainwright,
359 So.2d 11 (Fla. 1st DCA 1978) 15

OTHER AUTHORITIES

§27.3455, Fla. Stat.	6,7,13,16,18
§27.56, Fla. Stat.	16
§59.041, Fla. Stat.	22
§775.082, Fla. Stat.	6
§775.083, Fla. Stat.	6
§775.084, Fla. Stat.	6
§924.33, Fla. Stat.	22
§943.25(3), Fla. Stat.	7,13,16
§943.25(4), Fla. Stat.	19
§944.28(1), Fla. Stat.	15
§960.20, Fla. Stat.	7,13,16,19
§960.25, Fla. Stat.	16
Fla.R.Cr.P. 3.720	2,3,7,9,10, 11,12,13,15
Fla.R.Cr.P. 3.720(d)	16
Fla.R.Cr.P. 3.800(a)	12,22
Fla.R.Cr.P. 3.986	12
Art. V, §2(a), Fla. Const.	9
§90.402, Florida Evidence Code	11
Chapter 86-154, Laws of Florida	18
Shepard's Florida Citations	23

PRELIMINARY STATEMENT

References to the record on appeal will be by "R" and page number. The Court should note that this case presents the same issue as State v. Beasley, case no. 76,102, which was presented to the Court for resolution in September 1990. The state's brief here is an adaptation to the facts and posture of this case of the arguments presented in Beasley.

STATEMENT OF THE CASE AND FACTS

The state agrees with petitioner's statement and supplements with the following.

At the sentencing hearing conducted pursuant to Fla. R. Cr. P. 3.720, the mandatory costs at issue were imposed without objection (R192) except that the trial judge granted defense counsel's request that petitioner be given a grace period following release in which to pay. R194-195.

SUMMARY OF ARGUMENT

Petitioner was afforded procedural due process in imposing the statutorily mandated costs. He was given "reasonable notice", prior to the commission of the offense for which he was convicted, of the mandatory costs by their inclusion in Florida Statutes. He was also given reasonable notice, as are all other defendants, that sentencing hearing are conducted "as soon as practicable" following conviction of a criminal offense and that, pursuant to Rule 3.720, convicted defendants will be called on at the sentencing hearing to offer any legal reason why sentence should not be imposed, including both mandatory and discretionary sentences. Petitioner was given a fair opportunity to be heard at the rule 3.720 sentencing hearing. At that hearing, he gave no legal reason why the statutorily mandated costs should not be imposed. He cannot now raise the issue for the first time on appeal.

The imposition of statutorily mandated penalties, whether characterized as costs, fines, surcharges, or terms of imprisonment, have been consistently upheld by this Court against due process and equal protection challenges.

There is no constitutional impediment to imposing mandatory costs, even on indigent defendants. Indigency does not become constitutionally relevant until the state attempts to collect the

costs or to otherwise penalize an indigent for failure to pay the costs.

ARGUMENT

ISSUE

RHODES WAS GIVEN REASONABLE NOTICE AND A FAIR OPPORTUNITY TO BE HEARD PURSUANT TO THE DUE PROCESS CLAUSES OF THE FEDERAL AND STATE CONSTITUTIONS.

For our purposes, procedural due process consists of two components: "reasonable notice" and "a fair opportunity to be heard." Goodrich v. Thompson, 96 Fla. 327, 118 So. 60, 62 (1928); Scull v. State, case no. 73,687 (Fla. November 8 1990). It is the state's position that publication of criminal offenses and the punishments thereof in the Laws of Florida or Florida Statutes, coupled with standard trial procedures in the guilt and sentencing phases, as set forth in Florida Rules of Criminal Procedure, afforded Rhodes procedural due process.

REASONABLE NOTICE

It is settled law that "every citizen is charged with knowledge of the domestic law of his jurisdiction." Akin v. Bethea, 33 So.2d 638, 640 (Fla. 1948). The adoption of criminal offenses and the punishment(s) thereof and their publication in the Laws of Florida and Florida Statutes gives every citizen constructive notice of the law. Thompson v. State, 56 Fla. 107, 47 So. 816 (1909); Sammis v. Bennett, 32 Fla. 458, 14 So. 90

(1893). This principle of constructive notice of statutory law is the foundation for the ex post facto clauses of the Florida and United States constitutions. All criminal prosecutions are grounded on its viability. In order to prosecute, convict and punish, the state must show that, prior to the commission of the alleged offense(s), the defendant had been given "fair warning," i.e., reasonable notice, of the criminal offense(s) and the penalties thereof. Weaver v. Graham, 450 U.S. 24, 28, 67 L.Ed.2d 17,23, 101 S.Ct. 960 (1981). This prohibition against retroactive, i.e., unnoticed, application of penalties extends to the imposition of statutory costs. State v. Malone, 512 So.2d 832 (Fla. 1987) (Retroactive application of section 27.3455 violates the ex post facto clause); Gianfrancisco v. State, 509 So.2d 1331 (Fla. 2d DCA 1987) (Ditto).

Under the above law, it is uncontrovertible that prior to the commission of the escape offense for which he was convicted, and necessarily at all times thereafter, Rhodes had reasonable notice of the following:

1. That escape was a felony of the second degree under section 944.40, Florida Statutes.

2. That conviction of escape was punishable pursuant to sections 775.082, 775.083, or 775.084 and that any term of imprisonment would be consecutive to any former sentence.

3. That conviction for the offense of escape or any other criminal offense would result in the mandatory imposition of costs in fixed sums pursuant to, e.g., sections 27.3455, 943.25(3), and 960.20, Florida Statutes.

4. That upon adjudication of guilt of escape or any other criminal offense, the trial judge would conduct a sentencing hearing as soon as practicable pursuant to Florida Rule of Criminal Procedure 3.720, at which Rhodes would have the opportunity to submit evidence and arguments relevant to the sentence and to offer legal cause why sentence should not be pronounced.

This Court has consistently upheld mandatory sentencing provisions, such as the fixed costs at issue here, against due process challenges of reasonable notice. In Scott v. State, 369 So.2d 330, 331 (Fla. 1979), the defendant was convicted of attempted murder in the second degree. This Court tersely stated and reiterated the law on due process challenges to mandatory sentencing provisions.

> The defendant concedes that Florida courts have consistently rejected constitutional challenges to statutes which require mandatory minimum sentences to be imposed and that as a general proposition, if the sentence given is one that has been established by the legislature and is not on its face cruel and unusual, the imposition thereof will be sustained as against attacks based on due process, equal protection, separation of powers

> and legislative usurpation arguments. [cites omitted].
> He [Scott] contends the statute does not meet constitutional muster because:
> 1) It does not place defendant on notice that a conviction for this crime would subject him to the penalty provisions of the statute under attack; [emphasis added]
>
> * * *
>
> 3) The statute unconstitutionally binds trial judges to a sentencing process which wipes out any chance for a reasoned judgment;
>
> * * *
>
> We reject the contentions of the defendant and hold that the statute is constitutional. [cites omitted].

Id.

The rejection of contention one is directly on-point here. See, Bryant v. State, 386 So.2d 237. 241 (Fla. 1980) ("Under Florida law, however, there is no requirement that a defendant be advised of any mandatory minimum sentence."). See, also, Sireci v. State, 399 So.2d 964, 970 (Fla. 1981), cert. denied, 456 U.S. 984, 102 S.Ct. 2257, 72 L.Ed.2d 862, where it was held that publication in Florida Statutes provided notice to defendants of the aggravating circumstances applicable to capital crimes.

Applying the above law to the instant case, it is apparent that under Florida law the requirement of the ex post facto clause that a defendant be given notice of criminal offenses and penalties thereof prior to the alleged commission of the offenses also serves to afford all defendants their procedural due process right of reasonable notice of crimes and penalties thereof. Parenthetically, it should be noted that prior notice of criminal

offenses also affords violators substantive due process. There is no basis for Rhodes, or any other similarly situated person, to assert that he or they did not have reasonable notice of the mandatory penalties at issue here prior to the commission of a criminal offense and at all times thereafter.

FAIR OPPORTUNITY TO BE HEARD

Under article V, section 2(a) of the Florida Constitution, it is the responsibility of this Court to "adopt rules for the practice and procedure in all courts." This responsibility to adopt procedural rules for courts and the concomitant constitutional responsibility to ensure that such rules afford parties their procedural due process rights coalesce, inter alia, in Florida Rules of Criminal Procedure. Sentencing procedures under these rules are contained in section XIV, or, more specifically as they apply here, rule 3.720, titled Sentencing Hearing. The mandatory costs and surcharge at issue here are all contingent on a judgment of guilty at the conclusion of the guilt phase. The question for this Court is whether rule 3.720 affords Rhodes, and others similarly situated, a fair opportunity to be heard on whether mandatory fixed costs should be imposed. It is the state's position that they do and that it is not necessary for this Court to revisit and amend the rule. In determining whether this assertion is correct, the Court should recall the

well settled principle that procedural due process is situational, it is not a fixed set of procedures applicable in all circumstances. Scull. As the Supreme Court said in Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972):

> Once it is determined that due process applies, the question remains what process is due. It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands.
>
> * * *
>
> To say that the concept of due process is flexible does not mean that judges are at large to apply it to any and all relationships. Its flexibility is in its scope once it has been determined that some process is due; it is a recognition that not all situations calling for procedural safeguards call for the same kind of procedure.

Id.

Rule 3.720 requires trial judges to conduct sentencing hearings "as soon as practicable" after an adjudication of guilt. At this hearing, defendants are given an opportunity to show legal cause why sentence should not be pronounced. More significantly, the parties are given the opportunity to submit evidence and argument relevant to potential sentences. Bearing in mind that "as soon as practicable" urges expeditious sentencing, continuances may be granted if the parties have relevant evidence or argument which for good cause cannot be

immediately submitted. Denial of motions for continuance are subject to an abuse of discretion standard with its heavy deference to the trial judge's decision. Manigault v. State, 534 So.2d 856 (Fla. 1st DCA 1988).

Rule 3.720 requires that parties be given the opportunity to present relevant evidence. Bearing in mind the Morrissey rule that due process is situational, the parties at sentencing hearings are entitled to point out relevant sentencing statutes to the court and to present evidence and argument on whether such statutes are mandatory or discretionary. To the degree, if any, that sentencing statutes are discretionary, the parties are entitled to submit evidence and argument as to how that discretion should be exercised. However, neither rule 3.720 nor due process, or section 90.402 of the Florida Evidence Code, require that a court offer parties an opportunity to submit irrelevant evidence or argument urging the court to refuse to perform a ministerial duty by not imposing a statutorily mandated sentence, i.e., to urge the court to impose an illegal sentence. The imposition of mandatory penalties, whether they involve fines, surcharges, costs, or minimum terms of imprisonment, is not discretionary. Indeed, should the judge fail to impose a mandatory sentence, the sentence itself is illegal and subject to reversal and remand for resentencing. D'Alessandro v. State, 360 So.2d 774 (Fla. 1978). Reversal for imposition of a mandatory

sentence does not violate double jeopardy even if the illegal sentence has commenced. Bozza v. United States of America, 330 U.S. 160, 67 S.Ct 645, 91 L.Ed 818 (1947). See, also, United States v. Purcell, 715 F.2d 561 (11th Cir. 1983) (When sentencing court discovers a sentence imposed by it does not conform to applicable statute, it has the duty to correct sentence even though serving of first sentence has begun.) Similarly, see also, Florida Rule of Criminal Procedure 3.800(a), "a court may at anytime correct an illegal sentence." To illustrate even more vividly the complete absence of discretion on whether to impose a mandatory penalty, even the extraordinary writ of mandamus will lie to require a trial judge to impose a mandatory sentence. D'Alessandro.

It is clear from the above that a trial judge at a sentencing hearing is not required to entertain evidence and argument calling for the illegal exercise of discretion in a non-discretionary setting. To do so would in fact be a useless act benefitting no one. It is also clear that neither Rhodes, nor any other person similarly situated, is denied due process by the imposition of mandatory costs and surcharge pursuant to statute, as here, without a special hearing, i.e., other than the sentencing hearing pursuant to rule 3.720. This conclusion is also supported by reference to the standard judgment and sentence form promulgated by this Court in rule 3.986. The judgment

portion of this form contains an unequivocal preprinted order that the defendant pay court costs pursuant to sections 960.20 and 943.25(3). This imposition of costs does not require even as much as a check mark by the trial judge, the imposition automatically travels with, or inheres in, the judgment of guilt. Similarly, the judgment form contains a check mark provision for the imposition of additional costs. This requires that the trial judge fill in the applicable sum from the schedule contained in section 27.3455 based on the offense committed, i.e., felonies - $200.00, misdemeanors and criminal traffic offenses - $50.00.

Rule 3.720 permits a defendant to raise legal causes why a sentence should not be imposed. A defendant could, of course, raise a constitutional challenge to any sentencing statute, whether mandatory or discretionary. Although Rhodes raised no such challenge below, or any other challenge for that matter, the state considers it prudent and relevant to point out that this Court has previously upheld the constitutional authority of the legislature to prescribe mandatory costs and surcharges, i.e., penalties, on criminal defendants convicted of either violent or nonviolent criminal offenses. See <u>State v. Champe</u>, 373 So.2d 874, 880 (Fla. 1979):

> Unlawful taxes. Appellees' remaining point, never addressed by the trial court, is that the charge imposed by Section 960.20 is not a "cost," and that the charge imposed by Section 960.25 is not a "fine," but rather that both are illegal taxes. They assert

> that fines must be imposed strictly as punishment for the commission of crimes, and that costs must be expenses incident to case prosecution. The latter contention was specifically rejected in State v. Young, 238 So.2d 589 (Fla. 1970). As to the former, the five percent surcharge in Section 960.25 may quite properly be considered as a form of punishment for the offense. Punishment in the form of restitution is not a novel concept, and this form of punitive measure is valid unless so "excessive" or "harsh" as to be "plainly and undoubtedly in excess of any reasonable requirements for redressing the wrong." The five percent surcharge in the statute is reasonably and uniformly proportionate to the gravity of the offense, and therefore constitutionally sound.

Id. See, also, Scott v. State, 369 So.2d at 331 quoted above, "Florida courts have consistently rejected constitutional challenges to statutes which require mandatory minimum sentences to be imposed ... if the sentence given is one that has been established by the legislature and is not on its face cruel and unusual, the imposition thereof will be sustained as against attacks based on due process, equal protection, separation of powers and legislative usurpation arguments." Champe is also useful in that it clearly recognizes that costs, surcharges, and fines are all subsumed within penalties and are subject to the same constitutional constraints and analysis.

The limited right to be heard when the legislature mandates a particular penalty for a criminal offense, consistent with the flexible nature of due process, is also illustrated by the

penalty for escape under section 944.28(1), Florida Statutes (1989). This statute provides for automatic forfeiture of gain-time <u>without</u> <u>notice</u> <u>or</u> <u>hearing</u> when a prisoner is <u>convicted</u> of escape. This mandatory provision was, in fact, applied here without objection. R190-192. This provision has been previously upheld against due process challenge. <u>Morgan v. Cook</u>, 344 So.2d 577 (Fla. 1977); <u>Wright v. Wainwright</u>, 359 So.2d 11 (Fla. 1st DCA 1978); <u>Hands v. Wainwright</u>, 360 So.2d 783 (Fla. 1st DCA 1978). The last decision is noteworthy because the court articulated the rationale for the decision: "the judicial determination of guilt in the escape attempt was sufficient due process for the [mandatory] forfeiture of gain time." <u>Id.</u> From a constitutional due process viewpoint, the mandatory provisions of section 944.28(1) are analogous to the mandatory provisions at issue here. The mandatory costs, like the mandatory forfeiture of gain time, are automatically imposed upon a finding of guilty, due process has been satisfied and nothing further is required. Contrast application of the same principle in <u>Rankin v. Wainwright</u>, 351 F.S. 1306 (U.S.D.C. M.D. Fla. 1972), where the court, relying on <u>Morrissey</u>, held that where there was no adjudication of guilt the prisoner must be given due process in an administrative hearing with an opportunity to be heard.

The conclusion that rule 3.720 does not require a special hearing, beyond the routine sentencing hearing, to impose

mandatory, predesignated costs is also supported by specific provisions of the rule. Rule 3.720(d) implements section 27.56, Florida Statutes by providing for a cost lien to be imposed on all convicted defendants who receive the assistance of appointed counsel. The rule specifically provides that the defendant shall be given notice and an additional hearing to contest the "amount" of the lien, which, of course, cannot be determined in advance. This special provision is significant for two interrelated reasons. First, the fact that the rule requires notice and hearing <u>only</u> on attorney costs, and none of the other mandatory costs, brings to mind the principle of statutory interpretation that the mention of one thing implies the exclusion of all others, i.e., no other statutory costs require special notice and a hearing. <u>Thayer v. State</u>, 335 So.2d 815 (Fla. 1976). Second, this first principle is reinforced by the obvious distinction between the mandatory costs of sections 27.3455, 943.25(3), 960.20, 960.25, the amounts of which are fixed in advance and require no introduction of evidence, and the mandatory attorney cost lien of section 27.56 which requires the usual evidence concerning the hours expended by the attorney in defending the case in order to fix the amount of the fee. Logically, the latter requires notice and an evidentiary hearing; just as logically, the first group of fixed costs requires no hearing and no notice. This logic is confirmed by this Court's recent holding in <u>Bull v. State</u>, 548 So.2d 1103, 1104-1105 (Fla. 1989):

> Petitioner argues that rule 3.720(d)(1) is deficient in that he must be given an opportunity to challenge the imposition of any lien for the services of an appointed attorney. We disagree. Section 27.56 provides for the assessment of fees and costs as a matter of law. It is only the amount which is potentially at issue. There is no constitutional bar to advising an indigent defendant that he may be required to repay the costs of appointed counsel and to collecting those costs at some later time if the defendant becomes solvent. Fuller v. Oregon, 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974). Further, contrary to petitioner's argument, we see no conflict with Jenkins v. State, 444 So.2d 947 (Fla. 1984), where we held that notice and an opportunity to be heard must be given and a judicial determination made that the defendant is able to pay before repayment is enforced. Notice and an opportunity to be heard have been afforded, and enforcement of the lien will require a civil action during which petitioner may show an inability to repay the debt.

Id.

Bull makes clear that there is no procedural due process right to a hearing to contest the mandatory provisions of a statute beyond those afforded in all sentencing hearings. A special hearing is only required if the amount is at issue and the trial judge has discretion, i.e., the cost is not fixed in the statute. Moreover, relying on Fuller v. Oregon, 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974), Bull makes clear that there is no constitutional bar to assessing costs against an indigent defendant provided collection is not attempted until the defendant is solvent. Federal case law following Fuller is consistent with Bull. See United States v. Pagan, 785 F.2d 378, 381 (2d Cir.), cert. denied, 479 U.S. 1017, 107 S.Ct. 667, 93

L.Ed.2d 719 (1986) ("the imposition of assessments on an indigent, per se, does not offend the Constitution. Constitutional principles will be implicated here only if the government seeks to force collection of the assessments at a time when [Pagan is] unable through no fault of his own to comply"); United States v. Cooper, 870 F.2d 586 (11th Cir. 1989); United States v. Rivera-Velez, 839 F.2d 8 (1st Cir. 1988).

In connection with Fuller, Pagan, and Bull, it should be noted that none of the statutes at issue here mandating the assessment of costs have any provisions penalizing the indigent who is unable to pay the costs. We are not dealing with the situation condemned in State v. Yost, 507 So.2d 1099 (Fla. 1987), Mays v. State, 519 So.2d 618 (Fla. 1988), and Wood v. State, 544 So.2d 1004 (Fla. 1989), where section 27.3455, Florida Statutes (1985), in it's previous form, not only assessed costs but contained penalty provisions preventing the convicted defendant from earning gain-time until the costs were either paid in money or community services. See Chapter 86-154, Laws of Florida, section 1, amending section 27.3455, to delete penalty provisions.

The district court below perceived some tension between Jenkins v. State, 444 So.2d 947 (Fla. 1984) (Jenkins II) and Bull and a need to clarify certain language in Jenkins II.

In Jenkins v. State, 422 So.2d 1007 (Fla. 1st DCA 1982) (Jenkins I), the issue was whether a trial court could assess costs of $10.00 and $2.00 under sections 960.20 and 943.25(4) on an indigent defendant. Although the court was purportedly examining the question of assessing the costs, the analysis and language used by the court reveals that it was thinking in terms of not only assessing but simultaneously collecting the costs.

> Section 27.52, Florida Statutes (1981), establishes the criteria for a determination of indigency. Even the most cursory reading of that statute, as well as common sense, reveals that a defendant may be unable to afford attorneys and the large court costs dealt with in State v. Byrd, 378 So.2d 1231 (Fla. 1979), or Arnold v. State, 356 So.2d 862 (Fla. 1st DCA 1978), but is still easily able to pay $12.00 or $24.00. Jenkins was given ample opportunity to object and to convince the trial judge of his inability to pay the charge. He failed to take advantage of either.

Id.

On review of Jenkins I, in apparent recognition that the district court below had failed to make the critical distinction between assessment of costs and the collection of such costs, this Court explicitly stated that indigency does not prevent assessment of costs provided a judicial determination of ability to pay is subsequently made before collection is attempted. Nevertheless, the language in Jenkins II at 950 that the "state must, however, provide adequate notice of such assessment ... with full opportunity to object to the assessment of those costs"

overlooked the fact that, consistent with substantive due process and the ex post facto clause, Jenkins had notice of the mandatory penalty provisions of the statutes prior to the commission of the offense and was given a full opportunity during the trial to show that he did not commit the offenses and was not subject to the mandatory penalties. It may be that in arguing the case the state did not clearly present the distinctions between assessment and collection and between mandatory and discretionary penalties to the Court. The focus of both Jenkins I and Jenkins II appears to have been whether an indigent for the purposes of receiving the expensive services of an appointed counsel can nevertheless be required to immediately pay relatively modest costs such as those at issue in Jenkins. It appears that Jenkins is one of those unfortunate cases where the parties and the two courts were speaking at cross purposes. Obviously, as Jenkins I reasoned, it's possible for someone to be able to pay a small sum, i.e., to be non-indigent for the purposes of the small sum, while simultaneously being unable to pay a larger sum, i.e., to be indigent. Just as obviously, as Jenkins II reasoned and held, a defendant must be offered the opportunity to show indigency whether the sum be large or small. What the Jenkins I court had in mind as the indigency test was a bottom-line proof-of-the-pudding test: "Do you have sufficient cash in your pocket as you stand before this court to pay this nominal cost? If you do, you are not indigent for this purpose. Pay up."

From a procedural due process viewpoint, the distinction between assessing mandatory fixed costs and attempting to collect those costs is critical. When the fixed costs are being mandatorily imposed as a matter of law, indigency is constitutionally irrelevant, and the costs may be assessed without special notice or hearing. Only if there is an effort to collect does indigency become relevant and the defendant must then be given the opportunity to show an inability to pay. These distinctions were addressed in Bull, 548 So.2d at 1104-1105 in a manner which should have cleared up any ambiguity in Jenkins II:

> Petitioner argues that rule 3.720(d)(1) is deficient in that he must be given an opportunity to challenge the imposition of any lien for the services of an appointed attorney. We disagree. Section 27.56 provides for the assessment of fees and costs as a matter of law. It is only the amount which is potentially at issue. There is no constitutional bar to advising an indigent defendant that he may be required to repay the costs of appointed counsel and to collecting those costs at some later time if the defendant becomes solvent. Fuller v. Oregon, 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974). Further, contrary to petitioner's argument, we see no conflict with Jenkins v. State, 444 So.2d 947 (Fla. 1984), where we held that notice and an opportunity to be heard must be given and a judicial determination made that the defendant is able to pay before repayment is enforced. Notice and an opportunity to be heard have been afforded, and endorsement of the lien will require a civil action during which petitioner may show an inability to repay the debt.

Id.

The state submits that the above analysis of procedural due process and the case law and sentencing rules applicable to statutorily mandated fixed costs shows that Rhodes has not been denied due process and that no error has occurred. Moreover, Jenkins II, as clarified by Bull, does not require that special notice and hearings be afforded on whether legislatively mandated sentencing provisions should be imposed. Should the Court decide otherwise, the state submits that reversal and remand would be a useless and wasteful act because the "error," even if it exists, will always be harmless because Rhodes, or any other person similarly situated, cannot make the requisite showing of prejudice. §§59.041 and 924.33, Fla. Stat. Consider the following. The costs and surcharge at issue are statutorily mandated. Unless the trial judge is prepared to enter an illegal sentence by refusing to obey the law, the costs will be automatically reimposed. Should the trial judge enter an illegal sentence, the reversible error will be subject to correction on appeal, by rule 3.800(a) motion, or by writ of mandamus. D'Alessandro, Bozza, Purcell, rule 3.800(a). The harmlessness of the "error" brings to mind this Court's comments in State v. Strasser, 445 So.2d 322, 323 (Fla. 1983).

> On virtually identical facts, in Burney, the Second District refused to remand for new trial, noting, "We are not required to do a useless act nor are we required to act if it is impossible for us to grant effectual relief." 402 So.2d at 39. We agree. Strasser

> would gain nothing from a new trial. The only effect would be to increase the pressures on the already overburdened judicial system and, ultimately, on the taxpayer. We will not ignore the substance of justice in a blind adherence to its forms.

Id.

See, also, Boston v. State, 411 So.2d 1345 (1st DCA), rev. denied, 418 So.2d 1278 (Fla. 1982) (reversal and retrial would be pointless because result would be the same). In connection with the reference to an already overburdened judicial system see In re CERTIFICATION OF JUDICIAL MANPOWER, 558 So.2d 1002 (Fla. 1990), State v. Hatten, 561 So.2d 562 (Fla. 1990), In re ORDER ON PROSECUTION OF CRIMINAL APPEALS BY THE TENTH JUDICIAL CIRCUIT PUBLIC DEFENDER, 561 So.2d 1130 (Fla. May 3, 1990), Day v. State, 15 F.L.W. D2341 (Fla. Sept. 13, 1990), and the hundreds of citations to Jenkins II in Shepard's Florida Citations.

CONCLUSION

The state submits that from a procedural due process viewpoint there is no constitutional distinction between a mandatory "sentence," a mandatory "fine" or a mandatory "cost." From a notice viewpoint, the statutes provide notice prior to the commission of the offense. From a right to be heard viewpoint, the right to be heard during the guilt phase and the right during the sentencing hearing to show legal cause why a mandatory

sentence should not be imposed affords procedural due process to Rhodes and all others similarly sentenced. The certified question should be answered in the affirmative and the decision below affirmed.

Respectfully submitted,

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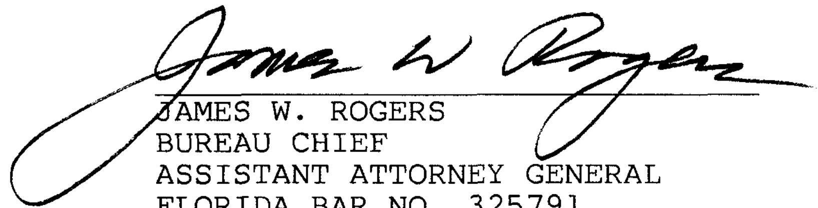
ATTORNEY GENERAL



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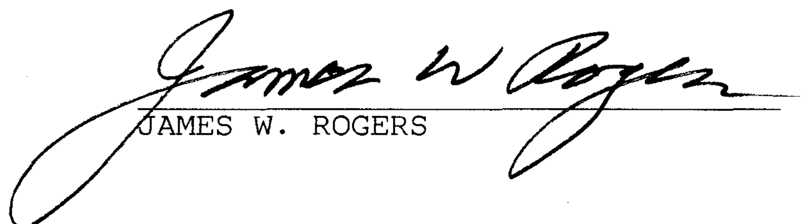
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been furnished by U.S. Mail to P. Douglas Brinkmeyer, Assistant Public Defender, Leon County Courthouse, Tallahassee, Florida 32301, this 15th day of November, 1990.



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