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IN THE SUPREME COURT OF FLORIDA

WILLIE O. FLOWERS,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO.: 76,854

REPLY BRIEF OF PETITIONER

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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Brown v. State,
15 FLW S607 (Fla. November 15, 1990)

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ARGUMENT

IN RESPONSE TO THE STATE AND IN SUPPORT
OF THE PROPOSITION THAT FLORIDA'S
UNIFORM SENTENCING GUIDELINES DO NOT
PERMIT THAT LEGAL CONSTRAINT POINTS BE
MULTIPLIED FOR EACH OFFENSE COMMITTED
WHILE UNDER LEGAL CONSTRAINT.

Petitioner asserts that this court has in effect already answered the certified question herein, albeit unwittingly. In Brown v. State, 15 FLW S607 (Fla. November 15, 1990) this Court issued its revised opinion. The particular issue in that case was whether disrespect for the law is a sufficient reason for departing from the recommended guidelines sanction. Brown was awaiting trial for a robbery and was released on bail on the condition that he was to stay at his father's house except when he was at work. He violated the specific conditions of bail by committing two counts of robbery and one count of threatening to discharge a destructive device. This Court stated:

Had Brown been on probation when he committed the 1987 robbery, there would have

been 17 extra points factored into his
guidelines scoresheet for legal constraint.

Id. at S608. Therefore, although Brown had committed three other crimes, this court in dicta asserted that legal constraint points could have been scored one time only. Applying this logic to the instant case Petitioner asserts that legal constraint points should only be scored a single time regardless of how many crimes are committed while on legal constraint.

Once again, Petitioner reiterates that this Court should answer the certified question in the negative. Petitioner's sentence must be vacated and the cause remanded for resentencing within the recommended guidelines at which time legal constraint points should be added a single time.

CONCLUSION

Based on the foregoing reasons and authority cited in this brief as well as in the initial brief, Petitioner urges this Honorable Court to answer the certified question in the negative and rule that in calculating legal constraint points, a court may not employ a multiplier based on the number of offenses committed while on legal constraint. This decision of the district court must be quashed and the cause remanded with instructions to vacate Petitioner's sentence and remand for resentencing under properly calculated scoresheet.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Ave, Suite 447, Daytona Beach, FL 32114 in his basket at the Fifth District Court of Appeal and mailed to: Willie O. Flowers, 3219 S. Pecan Street, Melbourne, FL 32901, this 14th day of December, 1990.

Michael A. Becker

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