IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,990

**THE STATE OF FLORIDA,**

Petitioner,

vs.

**DARNELL HEADINGS,**

Respondent.

# BRIEF OF PETITIONER ON THE MERITS

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## PRELIMINARY STATEMENT

This is an appeal from the District Court of Appeal, Third District, which passes upon a question certified to be of great public importance pusuant to Rule 9.030(2)(A)(v) of the Florida Rules of Appellate Procedure. The Petitioner, the State of Florida, was the prosecution at the trial court level and the Appellee in the District Court. Respondent, DARNELL HEADINGS, was the defendant in the trial court and the Appellant in the district court. The symbols "R." and "T." will be used to designate the record on appeal and the transcript of proceedings. A copy of the decision below and the Petitioner's brief filed in Beasley v. State, No. 76,102, are attached as an appendix to this brief.

## STATEMENT OF THE CASE AND FACTS

The respondent was charged in a single-count information with first degree arson. (R. 1). Headings, represented by a special assistant public defender, entered a plea of not guilty. (R. 4). At trial, the state produced evidence that the respondent lit several matches and set fire to his sheets in his jail cell and then placed them on top of a wooden television stand. (T. 62-64). The sheets and television were damaged. (T. 64-65). The respondent presented the defense of insanity through his own testimony. (T. 98-99). At the conclusion of the trial, the respondent was found guilty as charged. (R. 14).

Headings was adjudged guilty and sentenced to twelve (12) years, which was within the permitted range. (R. 15-19). Pursuant to the mandatory terms of sections 27.3455, 960.20 and 943.25(4), respectively, Headings was ordered to pay predesignated costs of $200.00, $20.00, and $3.00. (R. 15). Pursuant to section 943.25(8), $2.00 in optional costs were assessed. (R. 15).

On appeal, the district court below affirmed the conviction and sentence imposed but reversed the assessment of costs and certified the question here, as it did in its previous decision in Vamper v. State, 562 So.2d. 816 (Fla. 3d DCA 1990). (A. at 3-4). The question certified by the district court in Vamper as being one of great public importance, which is presently pending before this Court in Vamper v. State, No. 76,165 was as follows:

> WHETHER, SUBSEQUENT TO THE EFFECTIVE DATE OF CHAPTER 86-154, LAWS OF FLORIDA, INABILITY TO PAY IS A DEFENSE TO THE ASSESSMENT (BUT NOT ENFORCEMENT) OF COSTS AGAINST A CRIMINAL DEFENDANT?

## POINT ON APPEAL

WHETHER, SUBSEQUENT TO THE EFFECTIVE DATE OF CHAPTER 86-154, LAWS OF FLORIDA, INABILITY TO PAY IS A DEFENSE TO THE ASSESSMENT(BUT NOT ENFORCEMENT) OF COSTS AGAINST A CRIMINAL DEFENDANT?

## SUMMARY OF ARGUMENT

Consistent with the ex post facto clause, publication of the criminal offense and penalties thereof in Florida Statutes prior to the commision of the offense gave Headings reasonable notice of the mandatory costs at issue here.

Headings was given a fair opportunity to be heard in the guilt and sentencing phase by the standard procedures set forth in this Court's Florida Rules of Criminal Procedure. This conclusion is supported by controlling case law.

Statutorily mandated and fixed costs travel with, or inhere in, a judgment of guilt. The formal imposition of such statutorily mandated costs is a non-discretionary, purely ministerial, function.

The due process opportunity to be heard does not include the right to present irrelevant evidence or argument that the trial judge refuse to perform its ministerial sentencing duties. The sentencing hearing provided by rule 3.720 afforded Headings a due process opportunity to be heard which was appropriate to the circumstances.

This Court has consistently upheld the constitutional authority of the legislature to statutorily mandate the imposition of costs.

Jenkins v. State, 444 So.2d 947 (Fla. 1984), as clarified by Bull v. State, 548 So.2d 1103 (Fla. 1989), does not require special notice and an additional hearing beyond the sentencing hearing afforded Headings pursuant to rule 3.720.

The certified question as presented in Vamper v. State, No. 76,165 should be answered in the negative, whereas the similar certified question as worded in Beasley v. State, No. 76,102, should be answered in the affirmative.

## ARGUMENT

SUBSEQUENT TO THE EFFECTIVE DATE OF CHAPTER 86-154, LAWS OF FLORIDA, INABILITY TO PAY IS NOT A DEFENSE TO THE ASSESSMENT (BUT NOT ENFORCEMENT) OF COSTS AGAINST A CRIMINAL DEFENDANT.

The petitioner respectfully adopts the argument portion of the brief in Beasley v. State, No. 76,102 which is presently pending before this Court on this issue. (A. 5-37).

## CONCLUSION

Based on the foregoing, the certified question should be answered in the negative, that inability to pay is not a defense to the assessment of costs against a criminal defendant and that Headings was given reasonable notice and a fair opportunity to be heard pursuant to the due process clause of the federal and state constitutions.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF PETITIONER was furnished by mail to C. Robert Mathis, Special Assistant Public Defender, Holland & Knight, 1200 Brickell Avenue, P.O. Box 015441, Miami, Floirida, 33101, on this 10th day of January, 1991.

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