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CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :
 :
 Petitioner, :
 :
 vs. :
 :
 RONALD WORLEY, :
 :
 Respondent. :
 _____ :

Case No. 77,417

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

ANSWER BRIEF OF RESPONDENT ON THE MERITS

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TENTH JUDICIAL CIRCUIT

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TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
PRELIMINARY STATEMENT	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
ISSUE I	
POINTS FOR LEGAL CONSTRAINT SHOULD ONLY BE SCORED ONCE FOR EACH SEN- TENCING EVENT REGARDLESS OF THE NUMBER OF NEW OFFENSES COMMITTED WHILE SUCH CONSTRAINT WAS IMPOSED.	3
CONCLUSION	6
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

CASES

PAGE NO.

<u>Cabrera v. State,</u> 16 F.L.W. D898 (Fla. 3d DCA 4/2/91)	3
<u>Carter v. State,</u> 571 So.2d 520 (Fla. 4th DCA 1990)	3
<u>Flowers v. State,</u> 567 So.2d 1055 (Fla. 5th DCA 1990)	3
<u>Lewis v. State,</u> 16 F.L.W. D352 (Fla. 2d DCA 2/1/91)	3
<u>Scott v. State,</u> 16 F.L.W. D356 (Fla. 2d DCA 2/1/91)	3
<u>Sellers v. State,</u> 16 F.L.W. D921 (Fla. 1st DCA 4/3/91)	3
<u>Walker v. State,</u> 546 So.2d 764 (Fla. 5th DCA 1989)	3
<u>Worley v. State,</u> 16 F.L.W. 354 (Fla. 2d DCA 2/1/91)	3, 5, 6

OTHER AUTHORITIES

Fla. R. Crim. P. 3.701	4
Fla. R. Crim. P. 3.701(d)(6)	4

PRELIMINARY STATEMENT

Respondent was the Appellant in the Second District Court of Appeal and the defendant in the trial court. Petitioner, the State of Florida, was the Appellee in the Second District Court of Appeal. The record on appeal, which was utilized on the District Court level, will be referred to by the symbol "R" followed by the appropriate page number.

SUMMARY OF THE ARGUMENT

The sentencing guidelines do not call for the multiplication of legal constraint point by the number of new offenses committed while a person is under such constraint.

ARGUMENT

ISSUE I

POINTS FOR LEGAL CONSTRAINT SHOULD ONLY BE SCORED ONCE FOR EACH SENTENCING EVENT REGARDLESS OF THE NUMBER OF NEW OFFENSES COMMITTED WHILE SUCH CONSTRAINT WAS IMPOSED.

Recently, the issue of multiplying legal constraint points on the guidelines scoresheet by the number of new offenses committed while a defendant was under such restraint has been addressed by several of Florida's District Court of Appeals resulting in conflict in the manner in which the issue was decided. The Fifth District Court of appeal in Walker v. State, 546 So.2d 764 (Fla. 5th DCA 1989), held that the multiplication of such point was permissible. The Fourth District Court of Appeal agreed with this decision in Carter v. State, 571 So.2d 520 (Fla. 4th DCA 1990). This question was later certified to this Court by the Fifth District Court of Appeal in Flowers v. State, 567 So.2d 1055 (Fla. 5th DCA 1990).

The First, Second and Third District Courts of Appeal have taken the contrary position and have concluded that legal constraint points should not be multiplied by the number of new offenses committed. Sellers v. State, 16 F.L.W. D921 (Fla. 1st DCA 4/3/91); Lewis v. State, 16 F.L.W. D352 (Fla. 2d DCA 2/1/91); Scott v. State, 16 F.L.W. D356 (Fla. 2d DCA 2/1/91); Worley v. State, 16 F.L.W. 354 (Fla. 2d DCA 2/1/91) and Cabrera v. State, 16 F.L.W. D898 (Fla. 3d DCA 4/2/91).

Assuming arguendo that ambiguity exists concerning the scoring of legal constraint points the rule of lenity and strict construction precluded the application of a multiplier. any ambiguity that may have existed is clarified by the petition of the sentencing guideline commission to this Court to allow the amendment of the committee notes to Florida Rule of Criminal Procedure 3.701(d)(6). Florida Rule of Criminal Procedure Re: Sentencing Guidelines (Rules 3.701 and 3.988), 16 F.L.W. S198 (Fla. 3/7/91). As the Petitioner notes, in the petition, the commission requests that the committee note to Rule 3.701(d)(6) be amended to reflect the fact that the commission never intended multiple scoring of legal constraint points for each new offense. The rule itself does not provide for the application of a multiplier when assessing legal constraint point. The use of such a multiplier will result in disproportionate sentences which is direct contrast to the uniformity in sentencing, purpose of the guidelines themselves.

The Petitioner suggests that a person who commits more than one offense while under legal should be penalized more harshly by using the multiplier, than a person who commits only one offense. There is, however, a flaw in this logic. A person demonstrates his lack of ability or desire to comply with such restraint if he commits one or three new offenses. The purpose of legal constraint points is to punish or enhance the sentence based upon this lack of compliance, a factor which need only be assessed once. In addition, a person who commits several new offenses does

receive a harsher sentence than a person who commits only one. Each of those new offenses are calculated into the guidelines and are part and parcel of the sentence ultimately received.

The decisions of the First, Second and Third District Courts of Appeal are correct in their ultimate conclusions that multipliers should not be applied when assessing legal constraint points. Thus, the decision of the Second District Court of Appeals in Worley, should be affirmed.

CONCLUSION

Based on the foregoing arguments and authorities this Court should hold that legal constraint points should not be multiplied and should uphold the decision in Worley.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Elaine Thompson, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 27th day of June, 1991.

Respectfully submitted,

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