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FILED
SID J. WHITE
JUN 10 1991
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs. Case No. 77,417

RONALD WORLEY,

Respondent.

_____/

AMENDED MERITS BRIEF OF PETITIONER

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TABLE OF CONTENTS

PAGE NO.

STATEMENT OF CASE AND FACTS.....1

SUMMARY OF ARGUMENT.....2

ARGUMENT
ISSUE.....3

WHETHER LEGAL CONSTRAINT POINTS ARE PROPERLY ASSESSED FOR EACH OFFENSE COMMITTED BY A DEFENDANT WHILE UNDER SUCH CONSTRAINT.

CONCLUSION.....5

CERTIFICATE OF SERVICE.....5

APPENDIX.....6

TABLE OF CITATIONS

PAGE NO.

Carter v. State,
571 So.2d 520, 522 (Fla. 4th DCA 1990).....1,3,4

Florida Rules of Criminal Procedure Re: Sentencing Guidelines
(Rules 3.701 and 3.988), 16 F.L.W. (S)198
(Fla. March 7, 1991).....3

Gissinger v. State,
481 So.2d 1269 (Fla. 5th DCA 1989).....3

Walker v. State,
546 So.2d 764 (Fla. 5th DCA 1989).....1,3,4

OTHER AUTHORITIES:

Fla. R. Crim. P. 3.701(b)(2).....3

Fla. R. Crim. P. 3.701(d)(6).....3

STATEMENT OF THE CASE AND FACTS

On May 18, 1989, the Respondent was charged with dealing in stolen property. He entered pleas of guilty and was placed on one year of community control. An affidavit of violation of community control was filed on September 27, 1989. While on community control, Respondent committed thirteen new offenses.

On January 30, 1990, the Respondent admitted violating his community control and entered pleas of nolo contendere to the thirteen new offenses. At the time he entered the pleas, the Respondent filed a motion to strike the guidelines computation sheet filed alleging that the use of the multiplier for legal constraint points was improper. The trial court ruled that in the absence of any conflicting law from the Second District or the Florida Supreme Court, it was required to follow Walker v. State, 546 So. 2d 764 (Fla. 5th DCA 1989).

On appeal, the Second District court held that the trial court erred in multiplying the points for legal constraint by the number of new offenses committed by the defendant while on probation [sic] to arrive at the defendant's presumptive guidelines sentence. The Second District reversed Respondent's sentence and remanded the case for correction of the scoresheet and sentencing.

The ruling of the Second District directly and expressly conflicted with the ruling in Walker, supra, and Carter v. State, 571 So. 2d 520 (Fla. 4th DCA 1991). Petitioner filed a notice to invoke discretionary jurisdiction based on the express and direct conflict.

SUMMARY OF ARGUMENT

In view of the purpose and intent of sentencing guidelines, it is clear that the Legislature did not intend for repeat offenders to only be assessed legal constraint points once and be given immunity for all violations thereafter when the defendant commits thirteen new offenses. Therefore the trial court properly assessed legal constraints points for each offense. This court should reverse the ruling of the Second District and reinstate the sentence imposed by the trial court.

ARGUMENT

ISSUE

LEGAL CONSTRAINT POINTS ARE PROPERLY ASSESSED FOR EACH OFFENSE COMMITTED BY A DEFENDANT WHILE UNDER SUCH CONSTRAINT.

The purpose of the sentencing guidelines is to increase the severity of the sanctions as the length and nature of the defendant's criminal history increases. Gissinger v. State, 481 So.2d 1269 (Fla. 5th DCA 1989). The Respondent committed thirteen new offenses while on community control. The primary purpose of sentencing is to punish the offender. Fla. R. Crim. P. 3.701(b)(2). In view of the purpose and intent of sentencing under the guidelines, the procedure used in Walker v. State, 546 So.2d 764 (Fla. 5th DCA 1989), and followed by the circuit in this matter, is both logical and necessary.

The "legal status at the time of the offense" refers not only to the primary offense, but any offenses at conviction. Carter v. State, 571 So.2d 520, 522 (Fla. 4th DCA 1990). Therefore a defendant is properly assessed legal constraint points to each offense for which he is sentenced where he was under legal constraint at the time of the offense. Id. To do otherwise would be irrational and unfair.

The State recognizes the recent opinion in Florida Rules of Criminal Procedure Re: Sentencing Guidelines (Rules 3.701 and 3.988), 16 F.L.W. (S)198 (Fla. March 7, 1991), wherein the court acknowledges receipt of a petition to make changes to the committee notes accompanying rule 3.701(d)(6). The petition states that the commission never intended to assess legal

constraint points for each offense committed while under legal constraint. However the State believes that the rule itself and the purpose of the guidelines is a better indication of the intent of the legislature rather than a reactionary statement from the commission rendered after the judicial process has been invoked.

The legal status points should be applied if not for each new offense, then at least for each new separate criminal episode. For example, Appellee went on several separate and distinct crime sprees. He should be assessed points for either each offense or at least each crime spree. To permit a defendant to go on numerous crime sprees with only one penalty is equivalent to permitting him to commit several crimes and only be charged for one. Each time Appellee committed a new offense knowing that he was on community control, he violated his community control. Therefore he should be assessed legal constraint points for each offense. To do otherwise would tell defendants that once they violated their probation or community control, they are free to commit as many crimes as possible since they will only receive one punishment. This is not what was intended by the legislature.

The Fifth and Fourth District Courts of Appeal properly assessed points each for each new offense. This Court should uphold the procedure employed in Walker and Carter, and reverse and remand this matter.

CONCLUSION

The question certified by the Fifth District Court of Appeal in Flowers v. State, 567 So.2d 1055 (Fla. 5th DCA 1990), should be answered affirmatively (see case no. 76,845 pending in this court), and the decision in the instant case reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to MEGAN OLSON, Assistant Public Defender, Polk County Courthouse, P.O. Box 9000-Drawer PD, Bartow, Florida 33830 on this 6th day of June, 1991.

Elaine L Thompson

OF COUNSEL FOR PETITIONER

APPENDIX

1. Decision of the Second District in Worley v. State, 573 So. 2d 1023 (Fla. 2d DCA 1991).

2. Decision of the Fifth District in Walker v. State, 546 So. 2d 764 (Fla. 5th DCA 1989).

3. Decision of the Fourth District in Carter v. State, 571 So. 2d 520 (Fla. 4th DCA 1990).

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