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**IN THE SUPREME COURT OF FLORIDA**

**STATE OF FLORIDA,**

Petitioner,

v. CASE NO. 77,820

**CORNELL WATTS,**

Respondent.

_____/

# RESPONDENT'S BRIEF ON THE MERITS

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## PRELIMINARY STATEMENT

The State of Florida is referred to herein as Petitioner and Cornell Watts as the Respondent.

References to the record on appeal are made by the letter R and the page number.

## STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of The Case and Facts set out in its Brief on the Merits.

## SUMMARY OF ARGUMENT

The certified question should be affirmatively answered based upon the overwhelming authority in this state. This Court and all five district courts of appeal have applied the sequential conviction doctrine which requires convictions on separate dates to give the criminal an opportunity for reformation.

There is no legislative history or specific language to indicate an intent in the 1988 amendment to abrogate the long - standing case law which supports the lower court's decision which should be affirmed.

## ARGUMENT

### ISSUE

WHETHER SECTION 775.084 (1) (a)1, FLORIDA STATUTES (SUPP. 1988), WHICH DEFINES HABITUAL FELONY OFFENDERS AS THOSE WHO HAVE "PREVIOUSLY BEEN CONVICTED OF TWO OR MORE FELONIES," REQUIRES THAT EACH OF THE FELONIES BE COMMITTED AFTER CONVICTION FOR THE IMMEDIATELY PREVIOUS OFFENSE?

The certified question above, framed by the Court below should obviously be positively answered in the affirmative if the doctrine of **stare decisis** and the overwhelming precedents are followed.

As Judge Zehmer pointed out in his specially concurring opinion in **Barnes -v- State**, 576 So. 2d 758 (Fla. App. 1 Dist. 1991), the construction and application of section 775.084, Florida Statutes, followed by the First District Court of Appeal in this case is well settled in this state. As he states, "All five of the district courts of appeal have recently approved this construction of the amended statute based on long-standing legal principles that have not been directly changed by the specific language of any amendments to that section." He goes on to establish that even the office of the Attorney General has consistently acknowledged the correctness of the doctrine in briefs.

Judge Zehmer's opinion is especially persuasive when he elaborates that:

> Within the past two years all five district courts of appeal in this state have decided this issue adversely to the state's argument in this case, **so there obviously is no conflict between decisions of these courts.** The district court decisions are based on legal principles consistently and uniformaly recognized and applied since the supreme court's **Joyner** decision in 1947. Nothing in the statutory language of the 1988 or 1989 amendments to section 775.084 clearly and unambiguously demonstrates any legislative intent to change these established legal principles governing the construction and application of the habitual offender statute. Absent clear and unambiguous language evidencing legislative intent to change or abrogate these long-standing legal principles governing the application of the habitual offender statute, the courts should refrain from reinterpreting and repudiating those long-standing principles. **That is the function of the legislature, not the courts,** for the court cannot ascertain nor be certain that the statute was not amended with the expectation of continued application of these long-standing principles. Stability in law is too important a consideration to justify our doing so. In view of the unanimity of rulings by all district courts of appeal on the question now before us, I am unable to agree that the court should revisit the statute and change these principles; **there is simply no question of great public importance presented.**

This Court held in **Joyner -v- State**, 158 Fla. 806, 30 So. 2d 304 (1947) that except for the first and earliest conviction, each successive conviction relied upon to habitualize a defendant must be for an offense committed after the immediately previous conviction.

The Third District Court of Appeal in **Shead -v- State**, 367 So. 2d 264 (Fla. 3d DCA 1979), explained:

> It is the established law of this state, as well as the overwhelming weight of authority throughout the country, that, when the statute requires two or more convictions as a prerequisite to an enhanced sentence on a present case, the defendant must have committed the second offense subsequent to his conviction on the first offense. Two or more prior convictions rendered on the same day are, therefore, treated as one offense for purposes of such provision in a habitual criminal statute.

The "sequential conviction requirement" referred to also as the **Joyner -Shead** principle is based upon the "opportunity for reformation" doctrine upon which Judge Miner elaborated in his majority opinion in **Barnes**, supra, to-wit:

> Up until the 1988 amendments, the purpose behind Florida's habitual offender provision had been to protect society from those criminals who persisted in crime after having been given opportunities to reform. As noted previously, **the sequential conviction requirement is a means of insuring that defendants have the chance to reform prior to being treated as**

> **habitual offenders.** This was true when the requirement had a basis in the language of the habitual offender provision, see **Joyner**, supra, and continued to be true long after the old two-tiered provision was discarded, see **Shead**, supra. Although the 1988 amendments brought a change in language which seemed to leave little room for sequential convictions, the amendments do not appear to have brought a corresponding change in the purpose of the statute. There is no indication that in amending section 775.084 the legislature sought to alter the purpose behind the habitual offender provision or to excise the sequential conviction requirement that had long been a part of the law. **Had the legislature intended to overturn long-standing precedent and the construction that the courts had placed on the statute, then it was obliged to use unmistakable language to achieve its objective.**

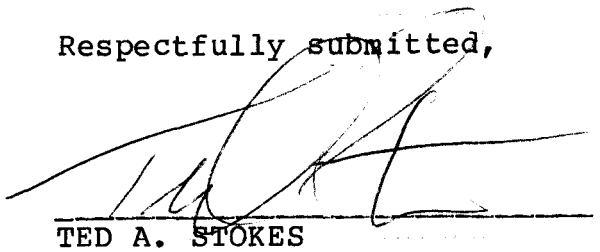
An examination of the staff analyses for the Senate and House Committee on Criminal Justice failed to reveal any intention to change the existing case law.

This Court should follow the well-reasoned opinions of Judge Miner and Judge Zehmer in **Barnes** and the corresponding decision written by Judge Wolf in this case, answer the certified question in the positive and affirm the holding of the First District Court of Appeal.

## CONCLUSION

The certified question should be answered affirmatively and the decision of the lower court affirmed as to the habitual offender issue.

Respectfully submitted,



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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 Bradley R. Bischoff, Assistant Attorney General this 5 day of July, 1991.

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