

**FILED**

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CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 78,164

LEVI RAHMING,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW

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RESPONDENT'S BRIEF ON THE MERITS

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ISSUE PRESENTED

WHETHER THE TRIAL COURT ERRED IN  
ASSESSING POINTS FOR BEING ON LEGAL  
CONSTRAINT FOR EACH OF THE SUBSTANTIVE  
OFFENSES FOR WHICH PETITIONER WAS BEING  
SENTENCED.

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PRELIMINARY STATEMENT

The Petitioner was the Appellant in the Fourth District Court of Appeal and the defendant in a criminal prosecution from the Seventeenth Judicial Circuit, in and for Broward County. The Respondent, State of Florida, was the Appellee and the prosecution, respectively in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

Unless otherwise indicated, all emphasis has been supplied by Respondent.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts appearing on page 2 through 3 of his merits brief to the extent that it is accurate and nonargumentative.

SUMMARY OF ARGUMENT

While the State acknowledgeges this Court's recent ruling in Flowers v. State, 16 FLW S637 (Fla. October 3, 1991) decided the issue presented at bar, the State maintains that the trial court did not err in assessing points for being on legal constraint for each of the substantive offenses for which he was being sentenced.

ARGUMENT

THE TRIAL COURT DID NOT ERR IN ASSESSING POINTS FOR BEING ON LEGAL CONSTRAINT FOR EACH OF THE SUBSTANTIVE OFFENSES FOR WHICH PETITIONER WAS BEING SENTENCED.

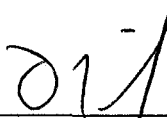
The State acknowledges that the issue presented at bar was decided adverse to the State's position in this Court's decision of Flowers v. State, 16 FLW S637 (Fla. October 3, 1991). Notwithstanding, the State would reiterate the arguments it made in Flowers and respectfully request this Court to reconsider this issue.

CONCLUSION

Wherefore, based upon the foregoing argument and authorities cited herein, Appellee respectfully requests that this Honorable Court affirm the decision of the Fourth District Court of Appeal below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by U.S. Mail to: ELLEN MORRIS, Assistant Public Defender, Counsel for Petitioner, Governmental Center, 9th Floor, 301 North Olive Avenue, West Palm Beach, Florida 33401, this 19<sup>th</sup> day of November, 1991.

  
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Of Counsel