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FILED
SID J. WHITE

✓ **AUG 21 1991**
CLERK, SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

EDDIE MACK LOCK, :
 :
 Petitioner, :
 :
 vs. :
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

By 78,472 _____
Chief Deputy Clerk
Case No. 90-2990

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

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

✓ KEVIN BRIGGS
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER 520357

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ATTORNEYS FOR PETITIONER

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STATEMENT OF THE CASE

In the Circuit Court for Lee County, the state filed an information charging Appellant, EDDIE MACK LOCK, with two counts of robbery with a firearm, first degree felonies punishable by life. [R267-68] These offenses allegedly occurred December 24, 1989. On June 28, 1990, Appellant appeared for a jury trial before the Honorable Jay B. Rosman, Circuit Court Judge. [R4] The jury returned verdicts of guilty of the charged offenses. [R262,313]

The trial court adjudicated Appellant guilty and declared him a violent habitual offender. [Vol.IV,42,395] The court sentenced Appellant on each count to life imprisonment, to run consecutively. [Vol.IV,44,396-98] The court also imposed a three-year minimum mandatory term for each count. [Vol.IV,44] A filed sentencing guidelines scoresheet indicates a point total of 463. [R392] However, corrections that indicate a point total of 344 were made during the sentencing hearing. [Vol.IV,36] This corrected total results in a guideline sentence of seventeen to twenty-two years imprisonment. Appellant filed a timely notice of appeal. [R401]

In an opinion filed on July 24, 1991, the Second District Court of Appeal affirmed Appellant's sentences. The court noted conflict with the First District Court of Appeal in Gholston v. State, 16 F.L.W. D46 (Fla. 1st DCA Dec. 17, 1990).

STATEMENT OF THE FACTS

On December 24, 1989 at about 6:45 a.m., Rose Lang was working at a convenience store when Michael Lumpkin entered the store. [R18,22,37,72] A black male entered the store and pulled a shotgun from beneath a brown trench coat. [R23-24,38,75] Pointing the gun at Lumpkin's head, the man demanded money. [R25,77] Lumpkin gave him a small amount of money. [R26,77] The man then pointed the gun at Lang and demand money from her. [R26,77] Lang complied, giving him money from the register. [R26-27,77-78]

Appellant denied having gone into the convenience store where Lang worked. [R173-74] Appellant also denied owning a shotgun or a trench coat. [R175-76] Appellant testified that he did not commit the robberies. [R177]

SUMMARY OF THE ARGUMENT

In the district court, Appellant argued that his consecutive life sentences were erroneous because Section 775.084(4), Florida Statutes (1990), makes no provision for enhancing penalties for first-degree felonies punishable by life. The Second District Court of Appeal rejected this argument. The court noted conflict with the First District Court of Appeal in Gholston v. State, 16 F.L.W. D46 (Fla. 1st DCA Dec. 17, 1990). Although the First District Court of Appeal has since receded from Gholston, this court can exercise discretionary jurisdiction under Jollie v. State, 405 So.2d 418 (Fla. 1981).

ARGUMENT

ISSUE I

CAN THIS COURT EXERCISE DISCRETION- ARY JURISDICTION OF THE INSTANT CASE?

The trial court sentenced Appellant as a violent habitual offender to two terms of life imprisonment, to run consecutively. [Vol.IV,42,44,396-98] These sentences were for Appellant's two convictions of robbery with a firearm, first-degree felonies punishable by life. Section 812.13, Fla.Stat. (1990). The Second District Court of Appeal rejected Appellant's argument that these sentences were erroneous because Section 775.084(4), Florida Statutes (1990), makes no provision for enhancing penalties for first-degree felonies punishable by life. The court noted conflict with Gholston v. State, 16 F.L.W. 46 (Fla. 1st DCA Dec. 17, 1990). 519 (Fla. 1st DCA 1990).

In Burdick v. State, 16 F.L.W. D1963 (Fla. 1st DCA July 25, 1991), the First District Court of Appeal receded from Gholston holding that a first degree felony punishable by life is subject to habitual offender treatment. The court certified the question to this court as a question of great public importance. Appellant respectfully requests that this court exercise its discretionary jurisdiction under Fla.R.App.P. 9.120 in the instant case to answer the same question. If this court were to grant jurisdiction of Burdick, conflict jurisdiction of the instant case is had under Jollie v. State, 405 So.2d 418 (Fla. 1981). In Jollie, this court

held that prima facie express conflict is established if a district court of appeal cites as a controlling authority a decision that is pending review in the Florida Supreme Court.

CONCLUSION

Based on the above argument and authorities, Appellant respectfully requests that this court grant discretionary jurisdiction of this case under Fla.R.App.P. 9.120.

APPENDIX

PAGE NO.

1. Decision of the Second District Court of Appeals in Lock v. State, Case No. 90-2990, Opinion filed July 24, 1991.

A1

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APPENDIX A1

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

EDDIE MACK LOCK,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Case No. 90-02990

Opinion filed July 24, 1991.

Appeal from the Circuit Court
for Lee County;
Jay B. Rosman, Acting Circuit
Judge.

James Marion Moorman,
Public Defender, and
Kevin Briggs, Assistant
Public Defender, Bartow,
for Appellant.

Robert A. Butterworth,
Attorney General, Tallahassee,
and Peggy A. Quince, Assistant
Attorney General, Tampa,
for Appellee.

LEHAN, Judge.

RECORDED &
INDEXED
JUL 24 1991
CLERK OF DISTRICT COURT
SECOND DISTRICT

We affirm the sentencing of defendant as an habitual violent felony offender upon his conviction for a first-degree felony punishable by life and fulfillment of the other requisites of section 775.084, Florida Statutes (1989). We adopt the reasoning of Paige v. State, 570 So.2d 1108 (Fla. 5th DCA 1990). See also Newton v. State, 16 F.L.W. D1499 (Fla. 4th DCA June 5, 1991); Tucker v. State, 576 So.2d 931, 932 (Fla. 5th DCA 1991); Westbrook v. State, 574 So.2d 1187, 1188 (Fla. 3d DCA 1991).

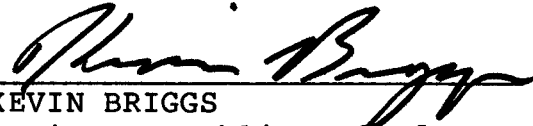
We note conflict with Gholston v. State, 16 F.L.W. D46 (Fla. 1st DCA Dec. 17, 1990), as did Newton and Tucker.

SCHEB, A.C.J., and ALTENBERND, J., Concur.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Peggy A. Quince,
Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on
this 17th day of August, 1991.

Respectfully submitted,



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