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OCT 17 1991

CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE No. 78-492

ROBERT L. COOK,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

\*\*\*\*\*

ON APPEAL FROM THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL  
CIRCUIT IN AND FOR MARTIN COUNTY, FLORIDA  
CRIMINAL DIVISION

\*\*\*\*\*

MERITS BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Robert Lee Cook was the defendant in the trial court, the appellant in the Fourth District Court of Appeal and is the Petitioner before this Court. Therefore, he will be referred to herein as "Petitioner".

The State of Florida was the prosecution in the trial court, the appellee in the Fourth District Court of Appeal and is the Respondent before this Court. Therefore, the State of Florida will be referred to as the "Respondent" or "State" herein.

The following symbols will be used:

"R"      Record on Appeal

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts to the limited extent that they represent a reasonably accurate, nonargumentative synopsis of the proceedings below.

SUMMARY OF ARGUMENT

The trial court improperly assessed legal constraint points for each offense in which Petitioner was sentenced where the use of a multiplier for calculating legal constraint points has been expressly disapproved by this Court in Flowers v.State, 16 F.L.W. S637 (Fla. Oct. 3, 1991).

ARGUMENT

POINT ON APPEAL

**THE TRIAL COURT IMPROPERLY ASSESSED  
LEGAL CONSTRAINT POINTS FOR EACH OFFENSE  
IN WHICH PETITIONER WAS SENTENCED.**

Petitioner contends that the trial court erred by multiplying his seventeen (17) legal constraint points by the three offenses Petitioner committed while under legal constraint. In Carter v. State, 571 So.2d 520 (Fla. 4th DCA 1990), the Fourth District Court of Appeal approved the assessment of legal constraint points for each offense committed while under legal constraint and subsequently in Ricks v. State, 578 So.2d 69, 70 (Fla. 4th DCA 1991), Regan v. State, 576 So.2d 1385 (Fla. 4th DCA 1991) and Preston v. State, 16 F.L.W. 869 (Fla. 4th DCA April 3, 1991), the court certified the following question of great public importance:

DO FLORIDA'S UNIFORM SENTENCING  
GUIDELINES REQUIRE THAT LEGAL  
CONSTRAINT POINTS BE ASSESSED FOR EACH  
OFFENSE COMMITTED WHILE UNDER LEGAL  
CONSTRAINT?

Beginning with Flowers v. State, 16 F.L.W. S637 (Fla. Oct. 3, 1991), and followed by the consolidated cases of Ricks v. State, No. 77,956 (Fla. October 10, 1991), Regan v. State, No. 77,782 (Fla. October 10, 1991), and Preston v. State, No. 77,781 (Fla. October 10, 1991) this Court answered the certified question in the negative, quashed the decisions below and remanded with instructions to recalculate the scoresheet consistent with the Flowers opinion. See also, Carter v. State, No. 77,434 (Fla. October 10, 1991).

Consequently, in recognizing that this Court will answer the same question certified below in the negative, Respondent would agree that this cause be remanded for reconsideration consistent with Flowers.




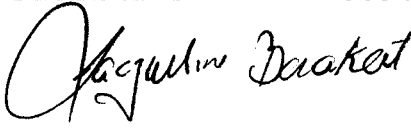
CONCLUSION

The question certified by the Fourth District Court of Appeal in the instant case, should be answered negatively, the decision below should be reversed, and this cause be remanded for resentencing consistent with the decision in Flowers.

Respectfully submitted,

**ROBERT A. BUTTERWORTH**  
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Tallahassee, Florida

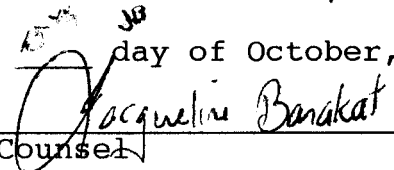
  
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Counsel for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing "Answer Brief of Appellee" has been furnished by courier to: **BARBARA A. WHITE**, Assistant Public Defender, Fifteenth Judicial Circuit, The Governmental Center, 301 N. Olive Avenue, 9th Floor, West Palm Beach, Florida 33401, this <sup>15</sup> day of October, 1991.

  
\_\_\_\_\_  
Of Counsel

JB/ka