

09 /  
**FILED**

SID J. WHITE

OCT 18 1991

CLERK, SUPREME COURT

By [Signature]  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

IVORY SHEFFIELD, )  
Petitioner, )  
v. )  
STATE OF FLORIDA, )  
Respondent. )  
\_\_\_\_\_ /

CASE NO. 78,650

PETITIONER'S BRIEF ON THE MERITS

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

GLEN P. GIFFORD  
ASSISTANT PUBLIC DEFENDER  
FLORIDA BAR #0664261  
LEON COUNTY COURTHOUSE  
FOURTH FLOOR, NORTH  
301 SOUTH MONROE STREET  
TALLAHASSEE, FLORIDA 32301  
(904) 488-2458

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	3
SUMMARY OF ARGUMENT	4
ARGUMENT	5
<u>CERTIFIED QUESTION/ISSUE PRESENTED</u>	
IS A FIRST DEGREE FELONY PUNISHABLE BY A TERM OF YEARS NOT EXCEEDING LIFE INPRISONMENT SUBJECT TO AN ENHANCED SENTENCE OF LIFE IMPRISONMENT PURSUANT TO THE PROVISIONS OF THE HABITUAL FELONY OFFENDER STATUTE?	5
CONCLUSION	13
CERTIFICATE OF SERVICE	13

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Burdick v. State,</u> 16 FLW D1963 (Fla. 1st DCA July 25, 1991)	1,5,7,8, 10,11
<u>Gholston v. State,</u> 16 FLW D46 (Fla. 1st DCA December 17, 1990)	5
<u>Johnson v. State,</u> 568 So.2d 519 (Fla. 1st DCA 1990)	5
<u>Jones v. State,</u> 546 So.2d 1134 (Fla. 1st DCA 1989)	5,7
<u>Perkins v. State,</u> 576 So.2d 1310 (Fla. 1991)	7
<u>Sheffield v. State,</u> Case. No. 90-2452 (Fla. 1st DCA August 27, 1991)	1
<u>West v. State,</u> 16 FLW D2044 (Fla. 1st DCA August 7, 1991) <u>review pending, Case No. 78,570</u>	6
 <u>CONSTITUTIONS AND STATUTES</u>	
49 Fla. Jur. 2d <u>Statutes</u> Section 195	7
Section 775.021(1), Florida Statutes	7
Section 775.081(1), Florida Statutes	7
Section 775.082(3)(b), Florida Statutes	7
Section 775.084(1)(a) and (1)(b), Florida Statutes	11
Section 775.084(4),(5), Florida Statutes	7,11
Section 810.02(2), Florida Statutes	10
Section 812.13(2)(a), Florida Statutes	10

IN THE SUPREME COURT OF FLORIDA

IVORY SHEFFIELD,            )  
                                  )  
      Petitioner,            )  
                                  )  
v.                                )  
                                  )  
                                  )  
STATE OF FLORIDA,         )  
                                  )  
                                  )  
      Respondent.            )  
\_\_\_\_\_  
                                  )

Case No. 78,650

PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner seeks review from the decision of the First District Court of Appeal in Sheffield v. State, case no. 90-2452 (Fla. 1st DCA August 27, 1991) (copy attached as an appendix). The lead case on this issue is Burdick v. State, 16 FLW D1963 (Fla. 1st DCA July 25, 1991) (en banc), in which the district court held that defendants convicted of a first-degree felony punishable by life could be sentenced as habitual offenders.

Record references designated (T\_\_) indicate trial and hearing transcripts, while (R\_\_) refers to pleadings, orders, etc.

STATEMENT OF THE CASE

The state charged Petitioner, IVORY SHEFFIELD, with robbery with a firearm. (R7-8) The state filed notice of intent to seek an enhanced sentence under the habitual offender statute. (R13) Petitioner went to trial on the charge before Circuit Judge Elzie Sanders. (T1) The jury found Petitioner guilty of robbery with a firearm as charged. (T192) At sentencing, the state presented pertinent evidence under section 775.084, Florida Statutes. (R31-42, 201-204) The guideline sentencing range extended to 22 years imprisonment. (R48) The court adjudicated petitioner guilty of armed robbery and imposed a habitual offender sentence of 22 years imprisonment, including a three-year mandatory minimum term. (R45-47)

Timely notice of appeal was filed, and the Office of the Public Defender was appointed to represent Mr. Sheffield in this appeal. (R52-54) The First District Court of Appeal affirmed the judgment and sentence, and certified this question to this Court:

IS A FIRST-DEGREE FELONY PUNISHABLE BY A  
TERM OF YEARS NOT EXCEEDING LIFE IMPRISON-  
MENT SUBJECT TO AN ENHANCED SENTENCE  
PURSUANT TO THE PROVISIONS OF THE HABITUAL  
FELONY OFFENDER STATUTE?

STATEMENT OF THE FACTS

As no trial issues are presented herein, the statement of the facts is omitted.

#### SUMMARY OF ARGUMENT

The habitual offender statute does not permit enhancement under that statute for one convicted of a first-degree felony punishable by life. That category of crime was specifically excluded from the statute by the Legislature. Penal statutes must be strictly construed in favor of the defendant.

Although the robbery statute cites to the habitual offender statute as a possible penalty, that citation is of no effect because first-degree felonies punishable by life were expressly omitted from the habitual offender statute. Additionally, a habitual felony offender is statutorily defined in part as "a defendant for whom the court may impose an extended term of imprisonment. . . ." As armed robbery may already be punished by a life sentence, the same as the maximum habitual offender sentence for a first-degree felony, the offense is not one for which the court may impose a term of imprisonment extended beyond that which is otherwise authorized by statute.

This Court should reverse the decision of the First District Court of Appeal below, answer the certified question in the negative, and remand for resentencing under the guidelines.

ARGUMENT

CERTIFIED QUESTION/ISSUE PRESENTED

IS A FIRST DEGREE FELONY PUNISHABLE BY A TERM OF YEARS NOT EXCEEDING LIFE IMPRISONMENT SUBJECT TO AN ENHANCED SENTENCE OF LIFE IMPRISONMENT PURSUANT TO THE PROVISIONS OF THE HABITUAL FELONY OFFENDER STATUTE?

The history of this issue in the First District is interesting, but confusing. In Johnson v. State, 568 So.2d 519 (Fla. 1st DCA 1990), the court held that the 1988 revised habitual offender statute did not apply to life felonies because life felonies were not included within the statute. In Gholston v. State, 16 FLW D46 (Fla. 1st DCA December 17, 1990), the court held that it did not apply to first-degree felonies punishable by life because they too were not included in the statute.<sup>1</sup>

In Burdick v. State, 16 FLW D1963 (Fla. 1st DCA July 25, 1991) (en banc), the court receded from Gholston and held that the habitual offender statute did apply to first-degree felonies punishable by life, even though they were not included in the statute.<sup>2</sup>

---

<sup>1</sup>In another context, the court held that a first degree felony punishable by life was properly scored as a life felony on a sentencing guidelines scoresheet. Jones v. State, 546 So.2d 1134 (Fla. 1st DCA 1989).

<sup>2</sup>Judge Ervin dissented, and petitioner will relay heavily upon his views in this brief.



Finally, in West v. State, 16 FLW D2044 (Fla. 1st DCA August 7, 1991), review pending, case no. 78,570, the court reaffirmed its Johnson position and held that life felonies are not subject to the habitual offender sentencing because they are not included within the statute, and because a life sentence is already available as a penalty.

This confusing sequence of decisions provokes two responses: referees should usually stick with the first call they make, because it is most likely the correct one; and the same statute cannot be read two different ways.

The starting point in any statutory construction question is the statute itself. The habitual offender statute provides that once a defendant is found to be an habitual offender or a violent habitual offender, the following penalties apply:

(4)(a) The court, in conformity with the procedure established in subsection (3), shall sentence the habitual felony offender as follows:

1. In the case of a felony of the first degree, for life.
2. In the case of a felony of the second degree, for a term of years not exceeding 30.
3. In the case of a felony of the third degree, for a term of years not exceeding 10.

(b) The court, in conformity with the procedure established in subsection (3), may sentence the habitual violent felony offender as follows:

1. In the case of a felony of the first degree, for life, and such offender shall not be eligible for release for 15 years.
2. In the case of a felony of the second degree, for a term of years not exceeding 30, and such offender shall not be eligible for release for 10 years.

3. In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

Section 775.084(4),(5), Florida Statutes (emphasis added).

Nowhere in the habitual offender statute itself does the category of crime at issue here, first-degree felony punishable by life, appear. Thus, the Legislature's omission of this degree of crime from the statute evinces its clear intent to exclude this category, especially since such crimes are already punishable by life in Section 775.082(3)(b), Florida Statutes.

In addition, it must be remembered that in construing penal statutes, the most favorable construction to the accused must be used. 49 Fla. Jur. 2d Statutes §195; Section 775.021(1), Florida Statutes:

The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.

This Court recently applied these principles in Perkins v. State, 576 So.2d 1310 (Fla. 1991) to find that cocaine trafficking is not a "forcible felony" because it was not defined as such by the Legislature.

The lower tribunal's response to this argument in Burdick was both predictable and superficial. The court found that a first-degree felony punishable by life is subject to habitual offender enhancement as a first-degree felony. The court did not mention its contradictory holding in Jones, supra, note 1, but merely cited to Section 775.081(1), Florida Statutes, for

the proposition that first-degree felonies punishable by life do not exist as a separate degree of crime.

Judge Ervin's dissent in Burdick sets forth the legislative history and the proper analysis:

Turning to the second point, that the lower court erred in imposing an enhanced life sentence upon appellant because the substantive underlying offense for which he was convicted is punishable by a maximum penalty of life imprisonment, I agree and would reverse. In my judgment it is illogical to assume that the legislature intended for a trial judge to have the authority to impose an enhanced sentence of life upon one who was already subject to a maximum sentence of life imprisonment for the offense for which he or she was convicted. My conclusion is supported by the legislative history of both sections 775.082 and 775.084, Florida Statutes.

Section 775.082(3)(b), Florida Statutes (1987), provides two methods of punishing persons convicted of felonies of the first degree: "[B]y a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment of a term of years not exceeding life imprisonment[.]" See also Jones v. State, 546 So.2d 1134, 1135 (Fla. 1st DCA 1989). When the 1971 legislative session enacted in the same legislative act section 775.082, establishing penalties for various categories of crimes, as well as section 775.084, creating the habitual offender classifications, the trial court's discretion to impose a maximum sentence within the range specified for all noncapital felonies was left unimpaired and remained so until October 1, 1983, the effective date of guideline sentencing.

Additionally, during the special session of November 1972, the legislature amended section 775.081 by designating "life felony" as an additional category to the list of felonies, and amended section 775.082 by adding subsection (4)(a), establishing as the penalty for a life

felony "a term of imprisonment in the state prison for life, or for a term of years not less than thirty." Ch. 72-724, Sections 1,2, Laws of Fla. In 1983, the penalty for a life felony was amended, providing for life felonies committed before October 1, 1983, a term of imprisonment for life or a term of years not less than thirty, and for life felonies committed on or after October 1, 1983, a term of imprisonment for life or a term of imprisonment not exceeding forty years. Ch. 83-87, Section 1, Laws of Fla. The obvious intent of such amendment was to make Section 775.082((3)(a), Florida Statutes (1983), consistent with the newly created guideline sentencing, providing at Section 921.001(4)(a), Florida Statutes (1983), that the guidelines were to be applied to all felonies committed on or after October 1, 1983, except capital felonies, and to all felonies committed prior to October 1, 1983, except capital felonies and life felonies, when sentencing occurred subsequent to such date and the defendant chose to be sentenced under the guidelines. Ch. 83-87, Section 2, Laws of Fla.

Even though the legislature as early as 1972 created the classification of life felonies, it never amended the habitual felony offender statute to include enhanced sentencing for life felonies. As previously stated in this dissent, the legislature was no doubt aware that the trial courts' discretion to impose sentence for the substantive offense within the maximum range remained unaffected until the creation of guideline sentencing. Consequently, the result reached by the majority is that persons who commit severe felony offenses categorized as life felonies after October 1, 1983 are eligible for guideline sentencing, whereas persons such as appellant who commit first-degree felonies punishable for a term of years not exceeding life imprisonment are denied such consideration upon being classified as habitual felons, because section 775.084(4)(e) excludes habitual felony sentences from guideline sentencing and other benefits. My thesis is, of course, not that the legislature could not validly

make this kind of distinction -- only that it did not intend to make it.

Burdick, 16 FLW at D1965 (Ervin, J., dissenting) (footnotes omitted).

The state also argued below that because the statutes defining crimes as first-degree felonies punishable by life refer to the habitual offender statute as a possible penalty,<sup>3</sup> the Legislature intended for that enhanced punishment to apply. Again, Judge Ervin's dissent in Burdick sets forth the legislative history and the proper analysis:

The reference in section 810.02(2) to section 775.084 appears in all noncapital felony and misdemeanor statutes listed under Title XLVI of the Florida Statutes. Thus, even though offenses which are designated life felonies were never made subject to enhanced sentencing under the habitual felony statute, reference to such statute is nonetheless made within each statute prescribing the penalty for life felonies. See, e.g., Section 787.01(3)(a)5., Fla.Stat. (1980) (kidnaping); Section 794.011(3), Fla. Stat. (1989) (sexual battery). Additionally, although section 775.084 had formerly provided enhanced sentencing for habitual misdemeanants, the legislature, effective October 1, 1988, deleted the provisions relating to habitual misdemeanants. See Ch. 88-131, Sections 6,9, Laws of Fla. In the 1989 Florida Statutes, however the legislature failed to delete references to section 775.084 in providing punishments for specified misdemeanors. See, e.g., Section 784.011(2), Fla.Stat. (1989) (assault), Section 784.03(2), Fla.Stat. (1989)(battery). Considering the

---

<sup>3</sup>e.g., the statute defining armed robbery, Section 812.13(2)(a), Florida Statutes, and the one defining armed burglary, Section 810.02(2), Florida Statutes.

legislature's wholesale indiscriminate reference to the habitual offender statute throughout the Florida Statutes, many of which are inapplicable, I do not consider that the state can take any comfort in the reference made in section 810.02(2) to section 775.084.

Burdick, 16 FLW at D1965 (Ervin, J., dissenting).

Another consideration, not expressly addressed in Burdick, compels the conclusion urged here. Section 775.084(1)(a) and (1)(b), Florida Statutes, defines habitual felony offenders and habitual violent felony offenders in part as defendants "for whom the court may impose an extended term of imprisonment. . . ." For a first-degree felony, that extended term is life. S. 775.084(4)(a)1 and (4)(b)1. However, robbery with a firearm is a crime already punishable by a life sentence. S. 812.13(2)(a). Thus, the offense is not one for which the court may impose a term of imprisonment extended beyond that which is otherwise authorized by statute. Robbery with a firearm and other "first-degree felonies punishable by life" are distinct from first-, second- and third-degree felonies for which the habitual offender statute provides the means to extend the maximum authorized punishment beyond what those who commit such felonies could otherwise receive. From this perspective, the question is not whether first-degree felonies punishable by life are first-degree felonies, but whether they are offenses for which the habitual offender statute authorizes an extended term of imprisonment. Because the same term of imprisonment is authorized elsewhere, the question must be answered in the negative.

For the reasons expressed herein, this Court should hold that robbery with a firearm (as well as other first-degree felonies for which a life sentence is authorized) is not an offense subject to habitual offender sentence enhancement.

CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this Court answer the certified question in the negative, reverse the decision of the First District Court of Appeal below, and remand for resentencing under the sentencing guidelines.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

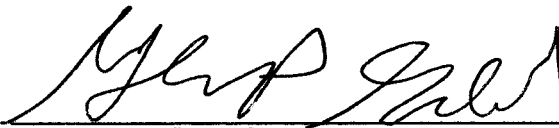


GLEN P. GIFFORD  
Fla. Bar No. 0664261  
Assistant Public Defender  
Leon County Courthouse  
301 S. Monroe - 4th Floor North  
Tallahassee, Florida 32301  
(904) 488-2458

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Amelia L. Beisner, Assistant Attorney General, The Capitol, Tallahassee, Florida, this 18<sup>th</sup> day of October, 1991.



GLEN P. GIFFORD



IN THE SUPREME COURT OF FLORIDA

IVORY SHEFFIELD, )  
Petitioner, )  
v. ) CASE NO. 78,650  
STATE OF FLORIDA, )  
Respondent. )  
\_\_\_\_\_ )

APPENDIX TO PETITIONER'S BRIEF ON THE MERITS

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

GLEN P. GIFFORD  
ASSISTANT PUBLIC DEFENDER  
FLORIDA BAR #0664261  
LEON COUNTY COURTHOUSE  
FOURTH FLOOR, NORTH  
TALLAHASSEE, FLORIDA 32301  
(904) 488-2458

ATTORNEY FOR PETITIONER

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

IVORY SHEFFIELD,

Appellant,

NOT FINAL UNTIL TIME EXPIRES  
TO FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED,

v.

CASE NO. 90-2452

STATE OF FLORIDA,

Appellee.

Opinion filed August 27, 1991.

An appeal from the Alachua County Circuit Court, Elzie S.  
Sanders, Judge.

Nancy Daniels, Public Defender; Glen P. Gifford, Assistant Public  
Defender, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General; Suzanne G. Printy,  
Assistant Attorney General, Tallahassee, for Appellee.

**RECEIVED**

**AUG 27 1991**

PER CURIAM.

**PUBLIC DEFENDER  
2nd JUDICIAL CIRCUIT**

Appellant, Ivory Sheffield, challenges his conviction and  
habitual offender sentence after a jury found him guilty of  
robbery with a firearm. As grounds for reversing his conviction,  
appellant complains that he was improperly cross-examined as to  
the specific details of his prior felony offenses. Concerning

his enhanced sentence as an habitual felony offender, appellant argues that the statute does not permit enhancement where the sentenced offense is a first-degree felony punishable by a term of years not exceeding life imprisonment. We affirm.

Although prior felonies or crimes involving dishonesty may be used to attack the credibility of a testifying criminal defendant, the prosecutor is not permitted to delve into the specifics of the prior convictions. Jackson v. State, 498 So.2d 906, 909 (Fla. 1986); Fulton v. State, 335 So.2d 280, 284 (Fla. 1976). In the instant case, the prosecutor improperly revealed the nature of the prior offenses, but appellant failed to preserve the error through a specific and timely objection. Because such an objection is necessary to preserve the error asserted, we must affirm appellant's conviction. Thomas v. State, 424 So.2d 193 (Fla. 5th DCA 1983).

Neither can we accept appellant's argument that section 775.084, Florida Statutes (1989), does not permit enhancement of his sentence for a first-degree felony punishable by life. In Burdick v. State, 16 F.L.W. D1963 (Fla. 1st DCA July 25, 1991), we rejected this argument and held that the habitual offender statute authorizes enhancement of first-degree felonies punishable by life. As we did in Burdick, we certify the following question as one of great public importance:<sup>1</sup>

---

<sup>1</sup> Because Sheffield was not given a life sentence, we have modified the question to omit reference to life imprisonment.

IS A FIRST-DEGREE FELONY PUNISHABLE BY A TERM  
OF YEARS NOT EXCEEDING LIFE IMPRISONMENT  
SUBJECT TO AN ENHANCED SENTENCE PURSUANT TO  
THE PROVISIONS OF THE HABITUAL FELONY OFFENDER  
STATUTE?

AFFIRMED.

JOANOS, C.J. and MINER, J., CONCURS, and ERVIN, J., CONCURS  
IN RESULT.