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IN THE SUPREME COURT OF FLORIDA

JAMES MONROE RAULERSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent,

CASE NO. 79,051

INITIAL BRIEF OF PETITIONER ON THE MERITS

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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STATEMENT OF THE CASE

The state charged petitioner, JAMES MONROE RAULERSON, with robbery with a firearm, aggravated assault on a law enforcement officer and possession of a firearm by a convicted felon. (R11)[1] The state filed and served notice of intent to seek sentencing of Mr. Raulerson as a habitual violent felony offender. (R17)

Trial commenced before Circuit Judge John Southwood. (T1) At the conclusion of the state's case, defense counsel moved for judgment of acquittal and asserted that the state had failed to present legally sufficient evidence that Raulerson possessed a gun during the robbery. (T168) The motion was denied. (T169-172) The defense rested without presenting evidence. (T175)

A defense request for an instruction on circumstantial evidence was denied. (T192) A state request for an instruction on a permissible inference from the defendant's flight was granted. (T193) During deliberations, the jury submitted a

[1] Herein, references to pleadings, orders, etc., appear as (R[page number]), while transcript citations appear as (T[page number]).

written question: "Please give us a definition of 'in flight', where it begins, ends." (T260) Defense counsel objected to any reinstruction and requested that the court inform the jurors to rely on their recollections of the facts and instructions. (T261) The judge said that he could not specifically answer the question but would reread the robbery instruction if the jurors wished. (T265) They did, and the court reinstructed them on robbery with and without a firearm, following an admonition against over-emphasizing this instruction in relation to the others. (T266-269) Five minutes later, the jury found Raulerson guilty of robbery with a firearm as charged. (R36, T270)

A motion for new trial was filed and denied. (R37, T278) The state produced evidence of two convictions for armed robbery, both obtained on the same date in 1979. (R39-41, T284-286) The state also produced an affidavit from an official in the Department of Corrections showing a release date of July 21, 1988 on sentences for those crimes. (R33-34, T289-290) Defense counsel objected to the second judgment and sentence as well as the affidavit, but produced no evidence in rebuttal. (T288, 298) The judge found Raulerson to be a habitual violent felony offender, and imposed a sentence of life imprisonment with 15-year mandatory minimum term, as well as a three-year mandatory minimum term for use of a firearm. (R63-66, T307-308) The court evidently considered the length of the habitual offender sentence to be nondiscretionary. (T302)

Timely notice of appeal was filed and the Office of the Public Defender was appointed to represent Raulerson in this

appeal. (R69-70) The First District Court of Appeal affirmed petitioner's judgment and sentence in a written opinion. (See Appendix) This Court postponed a decision on jurisdiction and ordered the parties to submit briefs.

STATEMENT OF THE FACTS

James Raulerson robbed a Barnett Bank in Jacksonville on July 20, 1990, (T32) His head swathed in gauze and his face partially covered by bandages, he walked up to teller Susan Lawrence and handed her a note stating "I have a gun. Put all your money in the green bag.'' (T33-36) Lawrence complied. She testified that Raulerson kept one hand in a jacket pocket, but that she never saw a gun or a bulge or outline in the jacket indicating a gun. (T40-41) Juanita Wright, at the next teller station, noticed the man, but was unaware a robbery was occurring. (T48) She also testified that she saw no bulge or protrusion from Raulerson's jacket that suggested he had a gun. (T48)

Drive-in teller Cynthia Rhinehart noticed a silent alarm that Lawrence had activated when Raulerson left the building. (T57) Upon seeing Raulerson walk to his car in the parking lot, she asked a customer in the drive-in, Fred Bedran, to follow him. (T59) Bedran followed and caught up with the car, a blue Chevette, and wrote down the tag number. (T67-68) Bedran testified that the driver of the car evidently noticed Bedran was following him and waved an object for Bedran to see. (T68) It wasn't a bank bag, according to Bedran, but neither could he be certain it was a gun. (T69, 72) Bedran had noticed nothing suggesting a gun as he watched Raulerson get in the car at the bank. (T71) After getting the tag number, Bedran passed the car, went back to the bank and gave the number to police. (T70)

M.J. Kravinsky, a police officer, found Raulerson's car at a hotel several miles from the bank, about 40 minutes after the robbery. (T80) The car was backed up to a hotel room. (T80) As he waited for assistance, Kravinsky saw Raulerson come out of the room and place something in the passenger side of the car. (T81) A second police car arrived. (T82) Raulerson got into the car as a third police car arrived, drove between two police cars trying to block him and led the officers on a chase. (T83) During the pursuit, Kravinsky saw Raulerson lean toward the passenger floorboard of the car. (T92) Eventually, Raulerson's car stopped in a residential driveway. (T91) The driver's door cracked open, and Raulerson again leaned to the passenger side of the car. (T93) Officers then heard a gunshot. (T93) A few seconds later, Raulerson fell out of the driver's side onto the ground. He had shot himself in the stomach. (T101-102) Officers found the gun on the front passenger floorboard of the Chevette. (T102)

SUMMARY OF THE ARGUMENT

I. Section 775.084(1)(b), Florida Statutes (1989), facially violates state and federal constitutional guarantees against twice being placed in jeopardy for the same offense. A statute is void on its face if it cannot be applied constitutionally in any conceivable situation. In every case in which it is used, application of section 775.084(1)(b) fixates on the nature of a prior felony to the exclusion of any criteria for the instant offense, so extensively that it constitutes a second punishment for the prior felony. Thus, on its face, the provision violates the Double Jeopardy clauses of the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

11. This Court recently held that petitioner's offense, robbery with a firearm, is a first-degree felony subject to habitual offender enhancement. The Court reasoned that to exclude this offense from operation of the habitual offender statute while permitting enhancement of less serious offenses would be contrary to the policy of the statute and would encourage undercharging crimes to avoid ineligibility for an enhanced sentence. However, the same kinks plague the exclusion of life felonies from habitual offender enhancement. Defendants convicted of life felonies (second-degree murder with a firearm, kidnapping with sexual battery, sexual battery with threat of great violence and with a firearm) are exempted from habitual offender enhancement, though they are by definition more severe than first-degree felonies. The exclusion of life felonies also

operates as a disincentive to prosecutors to charge life felonies when they may charge a first-degree felony which subjects the accused to habitual offender enhancement. No rational basis for the distinction exists, for a life sentence is possible without habitual offender enhancement both for life felonies and first-degree felonies punishable by life. Additionally, because petitioner's offense is already subject to an extended sentence, he is excluded by the language of section 775.084(1)(a) from habitual offender enhancement. The same extended sentence is already authorized elsewhere.

111. The case must be remanded for the trial court to reconsider the sentence imposed under section 775.084(4)(b)1, as within its discretion.

IV. The state failed to present competent, substantial evidence that Raulerson carried a firearm during the robbery or in flight after its commission. No one at the scene of the robbery saw a firearm, and a witness who followed the defendant from the scene could not be sure that an object Raulerson waved from inside a moving car was a gun. Although he did possess a firearm while attempting to elude police who found him at a hotel after the robbery, a construction of the term "flight after the commission" necessary to avoid unconstitutionality renders this evidence insufficient to satisfy the firearm element. Accordingly, the conviction must be reduced to simple robbery.

Although the district court rejected this argument without comment, petitioner presents it anew because it is an issue of

constitutional dimension, calling into question whether a portion of the robbery statute is void for vagueness.

ARGUMENT

I. ON ITS FACE, SECTION 775.084(1)(b), FLORIDA STATUTES (1989), VIOLATES THE DOUBLE JEOPARDY CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS.

The district court affirmed Raulerson's sentence partly on the authority of Perkins v. State, 583 So.2d 1103 (Fla. 1st DCA 1991), rev. pending, No. 78,613. In his concurring opinion, Judge Zehmer stated: "Because I have serious concern that section 775.084(1)(b), Florida Statutes (1989), is facially unconstitutional, my concurrence is made with the same reservations discussed in my special concurring opinion in Hall v. State, 588 So.2d 1089 (Fla. 1st DCA 1991)". Id, at 1103 (emphasis added). In Hall, Judge Barfield joined in a concurring opinion in which Judge Zehmer wrote:

> The issue presented in Perkins and in this case are identical. Although the instant offense for which appellant was sentenced was not a violent felony, appellant was sentenced as a habitual violent felony offender based on the fact that his prior conviction (for which he has presumably already served his sentence) met the statutory definition of violent felony. Had appellant been sentenced as a habitual felony offender pursuant to section 775.084(1)(a) based on the nature of the instant offense rather than as a habitual violent felony offender based on the nature of his prior conviction, the sentence would necessarily have been less under section 775.084(4). I view the imposition of the extent of punishment for the instant criminal offense based on the nature of the prior conviction as effectively imposing a second punishment on defendant solely based on the nature of his prior offense, a practice I had thought was prohibited by the Florida and United States Constitutions. This new statutory procedure is entirely different from the former concept of enhancing sentences of habitual offenders having prior offenses without regard of the

> nature of the prior felony, which has been upheld in this state and all other jurisdictions.

Id, at 1089 (emphasis in original).

Although petitioner's instant offense is a violent enumerated felony, the prospect of facial unconstitutionality of the habitual violent offender provisions of section 775.084 calls into question the validity of his sentence and all those sentenced as habitual violent felony offenders since the 1988 amendment creating this sentencing category.

A statute is void on its face if it cannot be applied constitutionally in any conceivable situation. City Council v. Taxpayers for Vincent, 466 U.S. 789, 796 (1984); Voce v. State, 457 So.2d 541 (Fla. 4th DCA 1984), rev. denied, 464 So.2d 556 (Fla. 1985). In every case in which it is used, application of section 775.084(1)(b) focuses on the nature of a prior felony to the exclusion of any criteria for the offense leading to its use, so extensively as to constitute a second punishment for the prior felony. Thus, on its face, the provision violates the Double Jeopardy clauses of the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution.

To punish a defendant as a habitual violent felony offender under section 775.084(1)(b) & (4)(b), the state need only show that he or she has one prior offense within the past five years for a violent felony enumerated within the statute. The current offense need meet no criteria, other than that it be a felony committed within five years of commission, conviction or

conclusion of punishment for the prior "violent" offense. Analysis of the construction of this statute and its potential uses leads to an inescapable conclusion: that the enhanced punishment is not for the new offense, to which the statute pays little heed, but instead for the prior, violent felony. The almost exclusive focus on this prior offense renders use of the statute a second punishment for that offense, violating state and federal double jeopardy prohibitions. When that prior offense also occurred before enactment of the amended habitual offender statute -- as is the case here -- the statute's use also violates prohibitions against ex post facto laws.

Habitual offender and enhancement statutes have been upheld against challenges similar to the one made here, on the grounds that the enhanced sentence was based not on the prior offenses but on the offense pending for sentencing, See, e.g., Gryger v. Burke, 334 U.S. 728 (1948). There the Court explained:

> The sentence as a fourth offender or habitual criminal is not to be viewed as either a new jeopardy or additional penalty for the earlier crimes. It is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one.

Id. at 728. Using the same reasoning, Florida's courts have also rejected challenges based on double jeopardy arguments. See generally, Reynolds v. Cochran, 138 So.2d 500 (Fla. 1962); Washington v. Mayo, 91 So.2d 621 (Fla. 1956); Cross v. State, 96 Fla. 768, 119 So. 380 (1928). If the provisions in question were more concerned with repetition, the inquiry might end here. The only repetition on which this portion of the statute dwells,

however, is the repetition of crime, not the repetition of violent crime. Its focus on the character of the prior crime, without regard to the nature of the current offense, distinguishes Florida's habitual violent felony offender sentencing scheme from previous enhanced sentencing provisions. This distinction is the point at which the amended statute on its face runs afoul of constitutional double jeopardy clauses.

Apart from Judge Zehmer's concurring opinions, the First District Court of Appeal has not meaningfully addressed this distinction. In Perkins v. State, supra, the Court rejected the same arguments made here, on the authority of Washington, Cross and Reynolds, concluding that "the reasoning of these cases is equally applicable to this enactment.'' Id. at 1104. Perkins thus left unaddressed the constitutional implications identified by Judge Zehmer in his concurrence in this **case** and in Hall, supra. Significantly, this court in Reynolds qualified its rejection of a double jeopardy challenge to the statute on a construction which barred consideration of prior offenses for which the defendant had already completed his or her sentence. The court declined to adopt a contrary construction, reasoning:

> Such an interpretation goes too far. it is not consistent with the theory that recidivist legislation does not create a separate crime but that it merely prescribes an enhanced punishment for the last offense committed. Such a construction of our statutes would require a re-examination of our prior position that these acts do not violate our constitutional guarantees that **a** person shall not be placed twice in jeopardy for the same offense,

138 So.2d at 504. Similarly, a recidivist statute the operation of which depends solely upon the character of a prior offense for its operation compels a new examination of its constitutional implications. Section 775.084(1)(b) rests so heavily on the prior offense that it creates a second punishment for that crime.

The amended statute also differs from recidivist schemes focused on repetition of a particular type of crime. In United States v. Leonard, 868 F.2d 1393 (5th Cir. 1989), enhancement of a sentence under a federal enhancement statute was upheld against an ex post facto attack. Leonard was convicted of possession of a firearm by a convicted felon and sentenced under the Armed Career Criminal Act, which authorized increased punishment for that offense upon proof of conviction of three prior enumerated violent or drug felonies. Id. at 1394-1395. In contrast to the statute at issue here, the federal statute applied exclusively to persons convicted of a specific offense, possession of a firearm by a convicted felon. In that respect, the defendant was being punished primarily for the instant offense, as held by the court. Id. at 1400. The Florida provisions at issue focus not on any specific offense pending for sentencing, but on the character of a prior offense for classification purposes. Consequently, an offender subjected to the operation of s. 775.084(1)(b), Florida Statutes, is being punished more for the prior offense than for the current one. In effect, as noted by Judge Zehmer in Hall, this then is a second punishment for the prior offense, barred by the state and federal constitutions.

In all its potential applications, section 775.084(1)(b) violates constitutional Double Jeopardy clauses. An offender with a qualifying prior enumerated felony comes within its purview regardless of whether he is being sentenced for a felony bad-check offense or an armed robbery. The statute dictates ignorance of the type of crime it purports to punish in the initial determination whether an offender qualifies for enhancement as a habitual violent felon. Therefore, regardless of the character of the instant offense, application of the habitual violent felon provisions amounts to a second punishment for the prior qualifying offense in every case. For these reasons, on its face, section 775.084(1)(b) violates the Double Jeopardy clauses of the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution. Raulerson must be resentenced without resort to this unconstitutional provision.

11. THE TRIAL COURT ERRED IN SENTENCING RAULERSON AS A HABITUAL VIOLENT FELON FOR ARMED ROBBERY, AN OFFENSE FOR WHICH AN EXTENDED TERM OF IMPRISONMENT IS ALREADY AUTHORIZED AND WHICH CONSEQUENTLY IS NOT SUBJECT TO HABITUAL OFFENDER ENHANCEMENT.

The district court affirmed appellant's life sentence as a habitual offender on the authority its decision in Burdick v. State, 584 So.2d 1035 (Fla. 1st DCA 1991). This Court recently affirmed the district court's holding in Burdick that the habitual offender statute may be used to sentence offenders convicted of first-degree felonies punishable by life imprisonment. No. 78,466, 17 FLW S88 (Fla. Feb. 6, 1992) Rehearing is pending in Burdick. Petitioner had argued that his crime, robbery with a firearm, is not subject to habitual offender enhancement. In light of Burdick, petitioner presents the following argument on the ramifications of the decision as well as a perspective not expressly addressed by this court therein.

Robbery with a firearm is a first degree felony punishable by life imprisonment. The Court held in Burdick that this is not a separate category of offense, but merely a first-degree felony with an alternative punishment. Therefore, the offense qualifies for enhancement under the habitual offender statute, which expressly covers first-degree felonies. Under this Court's reasoning, Rule 3.988, which promulgates guideline scoresheets, must be amended to eliminate point enhancement for a first degree felony punishable by life. Otherwise, an offender who would have received a shorter guideline sentence but for the enhanced scoring has received an unlawful sentence enhancement.

More fundamentally, this Court's holding demonstrates the irrationality and arbitrary classifications of the amended habitual offender statute. From Burdick:

> Clearly, the legislature intended first-degree felonies punishable by life imprisonment to be punished more severely than ordinary first-degree felonies. However, if first-degree felonies punishable by life imprisonment were not subject to enhancement under the habitual offender statute, then defendants convicted of first-degree felonies who were sentenced under the habitual offender statute would potentially receive harsher sentences than defendants convicted of first-degree felonies punishable by life who received guidelines sentences. This is especially true because sentencing under the habitual offender statute is entirely discretionary, whereas under the guidelines the trial judge is required to provide written reasons for departing from the prescribed network of recommended and permitted ranges.
>
> * * *
>
> We also note that excluding first-degree felonies punishable by life imprisonment from the habitual offender statute would operate as a disincentive to the state attorney who might otherwise be inclined to prosecute an accused for a first-degree felony punishable by life but who instead chooses to pursue the less severe substantive penalty because only that penalty is subject to habitual offender enhancement.

17 FLW at **S88.**

The same kinks plague the exclusion of life felonies from habitual offender enhancement. Defendants convicted of life felonies (second-degree murder with a firearm, kidnapping with sexual battery, sexual battery with threat of great violence and with a firearm) are exempted from habitual offender enhancement, though they are by definition more **severe** than first-degree felonies. The exclusion of life felonies also operates as a

disincentive to prosecutors to charge life felonies when they may charge a first-degree felony which subjects the accused to habitual offender enhancement. No rational basis for the distinction exists, for a life sentence is possible without habitual offender enhancement both for life felonies and first-degree felonies punishable by life.

Due process requires "a reasonable and substantial relationship to the objects sought to be attained." See State v. Saiez, 489 So.2d 1125 (Fla. 1986); State v. Barquet, 262 So.2d 431 (Fla. 1972). Equal protection requires that a statutory classification must apply equally and uniformly to all persons with the class and bear a reasonable and just relationship to a legitimate state objective. State v. Leicht, 402 So.2d 1153 (Fla. 1981); Haber v. State, 396 So.2d 707 (Fla. 1981). Under this Court's holding in Burdick, the habitual offender statute violates the requirements of due process and equal protection, and must be struck down as violative of the Fourteenth Amendment to the United States Constitution as well as Article I, Sections 2 and 9 of the Florida Constitution.

A related consideration, not expressly addressed in Burdick, compels the conclusion urged here. Section 775.084(1)(a) and (1)(b), Florida Statutes, define habitual felony offenders and habitual violent felony offenders in part as those "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.

111. THE CASE MUST BE REMANDED FOR THE TRIAL COURT TO RECONSIDER RAULERSON'S SENTENCE AS WITHIN ITS DISCRETION.

This Court recently held that a trial judge sentencing a defendant under section 775.084(4)(a)(1) is not required to impose the maximum penalty of life imprisonment prescribed by the statute. Burdick v. State, 17 FLW S88, S89 (Feb. 16, 1992). Here, the transcript of the sentencing hearing does not show that Judge Southwood believed he had discretion to impose a sentence other than life imprisonment. One portion of the transcript suggests he considered the sentence nondiscretionary. (T302) Therefore, as in Burdick, this case must be remanded for the trial court to reconsider the sentence as within its discretion.

IV. THE TRIAL COURT ERRED IN DENYING A MOTION FOR JUDGMENT OF ACQUITTAL ON ROBBERY WITH A FIREARM AFTER THE STATE PRESENTED LEGALLY INSUFFICIENT EVIDENCE THAT APPELLANT POSSESSED A FIREARM DURING THE ROBBERY OR FLIGHT THEREFROM.

In his motion for judgment of acquittal, defense counsel asserted that the trial court had presented legally insufficient evidence that Raulerson carried a firearm during the course of the robbery. (T168) The prosecutor responded that evidence of his claim to have a gun during the robbery, his act of waving of an object which might have been a gun at a witness who followed him therefrom during a brief car chase, and his possession of a gun during a second car chase from a hotel to the point of his arrest created a prima facie case on this question. (T169) The court denied Raulerson's motion. (T169)

The standard of review of this ruling is whether, after all conflicts in the evidence and all reasonable inferences therefrom have been resolved in favor of the verdict, the state presented substantial, competent evidence of this element. Tibbs v. State, 397 So.2d 1120, 1123 (Fla. 1981). The district court affirmed without comment the denial of the motion for acquittal on the firearm element. Because this is an issue of constitutional dimension, petitioner presents the argument anew in this Court.

Robbery is enhanced in severity from a second-degree felony to a first-degree felony punishable by life if, in the course of committing the crime, the offender carried a firearm, S.812.13(2)(a), Fla. Stat. (1989). The statute also provides the following pertinent definitions:

> (3)(a) An act shall be deemed "in the course of committing the robbery" if it occurs in an attempts commit robbery or in flight after the attempt or commission.

The threat of the use of an unseen firearm does not satisfy this element. Carter v. State, 503 So.2d 969 (Fla. 4th DCA 1987). Bank employees did not see a firearm. Raulerson's waving of an object at a witness who followed him in the car is insufficient proof, for the witness could not testify that the object was in fact a firearm. Evidence that Raulerson later was seen placing an object in the passenger side of his car, and that the firearm was discovered there upon his apprehension, suggests he did not have the gun in his possession during the robbery or while driving away from the bank. The state's evidence thus fails the test of competent, substantial evidence. The issue rests on whether Raulerson's possession of the gun during a chase starting from his hotel room at least 45 minutes after the robbery occurred in flight after the commission of the robbery.

Petitioner asserts that flight ends when an offender reaches an independent destination. Otherwise, flight becomes entirely subjective, and may extend days, weeks or months after the crime. As written, section 812.13(2)(a) imposes no requirement that the flight be connected to the robbery. This construction would render the provision unconstitutionally vague, as persons of ordinary intelligence must necessarily guess at its meaning. See Falco v. State, 407 So.2d 203, 206 (Fla. 1981). A construction which marks the end of flight as the point at which an offender reaches an independent destination would avoid this constitutional defect. Here, Raulerson reached an independent

destination, a hotel room. There was competent, substantial evidence only that he carried a firearm when leaving the hotel room. This was insufficient to sustain a conviction for robbery with a firearm.

Section 810.012, Florida Statutes, contains provisions similar to those of the robbery statute, enhancing the degree of a burglary if an offender carries a firearm during or in flight after its commission. In Peoples v. State, 436 So.2d 972 (Fla 2d DCA 1983), evidence that the burglar possessed a gun while running from the scene of the crime was held sufficient for a conviction of burglary with a firearm. In Fipps v. State, 553 So.2d 382 (Fla. 1st DCA 1989), this court construed section 775.087(2), providing for a three-year mandatory minimum term for use of a firearm in the commission of a felony, consistent with the definitions in the burglary statute. There, the defendant was apprehended in a vehicle while fleeing from the scene of the crime. This evidence was sufficient for the mandatory minimum term. Id. at 383. Raulerson, in contrast, was shown to have carried a firearm only during flight from a hotel room some minutes after and some distance from the bank he robbed. His possession of the weapon at that point was too far removed to be construed as occurring in flight after the commission of the robbery.

For these reasons, the state failed to provide competent, substantial evidence that Raulerson carried a firearm during the course of the robbery. His conviction must be reduced to simple robbery, a second-degree felony.

CONCLUSION

Based on the arguments contained herein and the authorities cited in support thereof, petitioner requests that this Honorable Court reduce his conviction to simple robbery, or, in the alternative, vacate his sentence as a habitual offender and remand to the trial court for resentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon Amelia L. Belsner, Assistant Attorney General, The Capitol, Tallahassee, Florida, 32399, on this 17th day of March, 1992.

GLEN P. GIFFORD
ASSISTANT PUBLIC DEFENDER