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IN THE SUPREME COURT OF FLORIDA

LAWRENCE TAYLOR,

Petitioner,

v.

CASE NO. 79,095

STATE OF FLORIDA,

Respondent.

_____ /

JURISDICTIONAL BRIEF OF RESPONDENT

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IN THE SUPREME COURT OF FLORIDA

LAWRENCE TAYLOR,

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_____ /

PRELIMINARY STATEMENT

Petitioner, Lawrence Taylor, appellant **and** defendant below, will be referred to herein as "petitioner." Respondent, the State of Florida, appellee and prosecuting authority below, will be referred to herein as "the State." References to the decision of the district court of appeal, included as an appendix to the jurisdictional brief of petitioner, will be by use of the abbreviation "App" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

No direct and express conflict exists between this case and Palmer v. State, infra, and McGouirk v. State, infra. Respondent is not opposed to the exercise of this court's discretionary jurisdiction to review this case on the basis of the district court's citation to Daniels v. State, 577 So.2d 725 (Fla. 1st DCA 1991), which is now pending before this court.

ARGUMENT

ISSUE

**NO EXPRESS AND DIRECT CONFLICT EXISTS
BETWEEN THIS CASE AND PALMER V. STATE,
438 SO.2D 1 (FLA. 1983) AND MCGOUIRK V.
STATE, 493 SO.2D 1016 (FLA. 1986)**

In Palmer v. State, 438 So.2d 1 (Fla. 1983), this court held that 3-year minimum mandatory sentences for firearm possession while committing a felony, pursuant to section 775.087(2), **Florida Statutes (1981)** could not **be** imposed consecutively for offenses arising from a single criminal episode. The defendant in Palmer simultaneously committed 13 robberies by brandishing his gun at a funeral director and mourners attending a funeral. Relying upon the language of section 775.087, the court stated:

Nowhere in the language of section 775.087 do we find express authority by which a trial court may deny, under subsection 775.087(2), a defendant eligibility for parole for a period greater than three years.

Palmer, 438 So.2d at 3.

In McGouirk v. State, 493 So.2d 1016 (Fla. 1986), **the** defendant was convicted of one count of attempted first-degree murder, two counts of attempted manslaughter, and one count of placing a destructive device, with all crimes arising from a **single** criminal act **of** placing a homemade timebomb beneath a house trailer. The court reversed 3- and 10-year consecutive mandatory minimum sentences imposed pursuant sections 775.087 and 790.161(3) on authority of

Palmer, stating that "[b]ecause the convictions simply did not arise 'from separate incidents occurring at separate times and places,' ... the mandatory minimums must be imposed concurrently rather than consecutively." Id., 493 So.2d at 1016.

No direct and express conflict exists between this case and Palmer and McGouirk for three reasons. First, section 775.084(4)(b), unlike sections 775.087 and 790.161(3), clearly authorizes imposition of mandatory minimum terms for each felony conviction sentenced pursuant to that statute. Second, section 775.084(4)(b) when read in pari materia with sections 775.021(4), 775.0841, and 775.0842, evinces a clear legislative intent to ensure the incarceration of habitual offenders for extended terms, the sentencing of habitual offenders for each criminal offense, and the authority to impose mandatory minimum sentences for each criminal offense sentenced pursuant to the habitual offender statute. Third, unlike in Palmer and McGouirk, which both involved the simultaneous commission of several crimes arising from a single act, the facts in this case show that petitioner engaged in separate uses of force or fear as to each victim and that the crimes were separated by time.

Section 775.084(4)(b), Florida Statutes (1989), under which petitioner was sentenced, requires a mandatory minimum sentence for each felony for which the offender is sentenced. The statute specifies a mandatory minimum sentence appropriate to the degree of the offense, i.e., 15

years for first degree felonies, 10 years for second-degree felonies, and 5 years for third-degree felonies. By contrast, section 775.087(2), provides **that** a defendant who was convicted of any of several enumerated crimes and who had a firearm in his possession "shall be sentenced to a minimum term of imprisonment of 3 calendar years." Similarly, Section 790.161(3) provides that "[i]f the act [of making, possessing, or placing a destructive device] results in bodily harm to another person or in property damage," the defendant shall be required to serve a term of imprisonment of not less than 10 calendar years before becoming eligible for parole. Critical to the distinction between the sentencing statute involved in this case, **and** the statutes involved in Palmer and McGouirk, is the fact that sections 775.087(2) and 790.161(3) are enhancement provisions which apply when the underlying crime involves an additional act by the defendant, such **as** possessing a firearm, or causing bodily harm or property damage. See State v. Boatwright, 559 So.2d 210 (Fla. 1990). Section 775.084(4)(b) is not an enhancement provision. Just as the mandatory minimum sentence imposed upon a defendant upon conviction of a capital felony was the statutorily required penalty for each capital felony in Boatwright, so too are the mandatory minimum terms imposed upon habitual violent felons the statutorily required penalties for each felony committed.

The court in Palmer found that section 775.087(2), when read in pari materia with section 775.021(4), **did** not authorize consecutive minimum mandatory three-year terms. However, since Palmer, section 775.021(4) has been significantly amended to stated that "[t]he intent of the Legislature is to convict and sentence for each criminal offense committed in the course of one criminal episode or transaction and not to allow the principle of lenity **as** set forth in subsection (1) to determine legislative intent." Ch. 88-131, Laws of Florida. In 1988, the above legislative statement was joined by section 775.0841 and section 775.0812, Florida Statutes (1989), stating:

775.0841 Legislative findings and intent. -- The Legislature hereby finds that a substantial and disproportionate number of serious crimes is committed in Florida by a relatively small number of multiple and repeat felony offenders, commonly known as career criminals. The Legislature further finds that priority should be given to the investigation, apprehension, and prosecution of career criminals in the use of law enforcement resources and to the incarceration of career criminals in the use of available prison space. The Legislature intends to initiate and support increased efforts by state and local law enforcement agencies and state attorneys' offices to investigate, apprehend, and prosecute career criminals and to incarcerate them for extended terms.

775.0842 Persons subject to career criminal prosecution. A person who is under arrest for the commission, attempted commission, or conspiracy to commit any felony in this state shall be the subject of career criminal prosecution efforts provided that such person qualifies as a habitual felony

offender or a habitual violent felony offender under s. 775.084.

Section 775.084(4)(b), when read in pari materia with the above sections, evinces a legislative intent to ensure the incarceration of habitual offenders for extended terms, the sentencing of such offenders for each criminal offense, and the authority to impose consecutive mandatory minimum terms pursuant to section 775.084(4)(b) for each criminal offense without regard to the temporal or geographic proximity of the crimes.

Palmer and McGouirk, in addition, each involved the commission of numerous crimes arising from a single act. In Palmer, the defendant effected the robbery of 13 individuals by brandishing his gun at the funeral home director and the mourners, and demanding money. In McGouirk, the defendant committed the crimes of attempted first-degree murder, attempted manslaughter, and placing a destructive device by the single act of placing a bomb underneath a house trailer. Palmer and McGouirk thus both involve crimes arising from a single act occurring in one time and place as opposed to separate acts. In this **case**, the district court found that petitioner's acts of first displaying his gun and demanding money from the first victim, Kimberly Smith, and subsequently displaying his gun and demanding, and obtaining, money from the second victim, Christopher Elrod, could not constitute two armed robberies because only one taking of money occurred. However, the court entered a conviction pursuant to section 924.34 for the lesser

included offense of aggravated assault with a deadly weapon as to victim Smith. Thus, **while** petitioner's crimes constituted a single criminal episode or incident, they did not arise from a single act. This **case thus** is factually similar to State v. Thomas, 487 So.2d 1043 (Fla. 1986) and distinct from both Palmer or McGouirk. In Thomas, the defendant shot a woman four times inside her trailer and outside in her yard, and then shot her son outside in the yard. The court approved of consecutive mandatory minimum sentences pursuant to section 775.087(2) because there were "two separate and distinct offenses involving two separate and distinct victims." Id., 487 So.2d at 1044. See ~~also~~ State v. Enmund, 476 So.2d 165 (Fla. 1985) (finding that Palmer was not analogous on its facts to a situation involving two separate and distinct homicides).

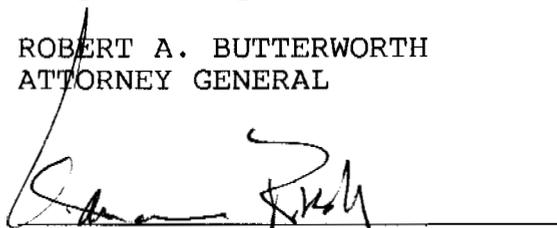
Because express legislative intent to permit imposition of consecutive mandatory minimum terms appears in section 775.084(4)(b), particularly when that statute is read in pari materia with sections 775.021(4)(a) and (b), 775.0812 and 775.084, section 775.084 is a sentencing statute as opposed to an enhancement provision such as section 775.087(2) or section 790.161(3), and because the crimes of armed robbery with a firearm and aggravated assault **with a** deadly weapon arose from separate acts occurring at separate times and involving distinct victims and distinct conduct, this case does not directly and expressly conflict with Palmer and McGouirk. This court therefore should decline to exercise its discretionary jurisdiction on this basis.

CONCLUSION

Based on the foregoing argument and citations of authority, respondent requests this court to decline to exercise its discretionary jurisdiction to review this case on the basis of express and direct conflict with Palmer v. State and McGouirk v. State. Respondent does not oppose the exercise of this court's discretionary jurisdiction to review this case based on the district court's citation to Daniels v. State, which now is pending before this court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing answer brief has been furnished by U.S. Mail to Lynn Williams, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, FL 32301 this 15th day of January, 1992.



Laura Rush
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