

FILED

SID J. WHITE

MAY 15 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STEVEN SALZMAN, :

Petitioner, :

vs. :

Case No. 79,219

STATE OF FLORIDA, :

Respondent. :

_____ :

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

REPLY BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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ARGUMENT

ISSUE I

WHETHER CASHING A STOLEN CHECK CONSTITUTES DEALING IN STOLEN PROPERTY, PURSUANT TO SECTION 812.019(1), FLORIDA STATUTES (1989)?

Mr. Salzman strongly contests the State's assertion that reversing his convictions and vacating his concurrent three year probationary terms for dealing in stolen property would have no practical effect. The State appears to be asking this court to apply the "concurrent sentence doctrine" expressed in Jacobs v. State, 389 So.2d 1054 (Fla. 3d DCA 1980). However, the concurrent sentence doctrine cannot logically apply to probationary terms imposed under Florida's sentencing guidelines.

Leaving intact Mr. Salzman's probationary terms would expose him to considerable prison time for two convictions of dealing in stolen property; offenses which the State concedes never occurred. If the trial court were ever to revoke Mr. Salzman's probation on the dealing in stolen property convictions, it could sentence him to four-and-one-half-years Florida state prison under the sentencing guidelines. (R 20); Florida Rules of Criminal Procedure 3.701(d)14 and 3.988(f). Contrary to the State's assertion, eliminating Mr. Salzman's exposure to substantial prison time for offenses which never occurred substantially affects his sentence.

Furthermore, properly eliminating the forty-two guideline scoresheet points for Mr. Salzman's two convictions for dealing in stolen property place him in the next lower guideline cell for any

future revocation of his concurrent probation on the remaining convictions. (R 20); Florida Rules of Criminal Procedure 3.988(f).¹

In Goodwin v. State, 593 So.2d 211 (Fla. 1992), this court recently held an appeal of an involuntary commitment did not become moot when the individual was released from the original commitment. This court based its holding upon the "collateral legal consequence" of a potential HRS lien on the individual's property. Goodwin, 593 So.2d at 214. In the instant case, Mr. Salzman's exposure to a substantial term of imprisonment is undoubtedly such a collateral legal consequence.

The concurrent sentence doctrine's continuing viability is questionable, at best, under Florida's sentencing guidelines. See, Uptafrafft v. State, 499 So.2d 33, 34 (Fla. 1st DCA 1986). Although the trial court withheld adjudication on both Mr. Salzman's dealing in stolen property charges, they will still score as two second degree felony convictions in any subsequent sentencing guideline calculation. See, Ward v. State, 568 So.2d 452, 454 (Fla. 3rd DCA 1990) (prior offense for which adjudication was withheld and defendant placed on probation properly scored as prior record on sentencing guideline scoresheet). Absent any sentence, the erroneous dealing in stolen property convictions could still produce collateral legal consequences in the form of a higher sentencing guidelines score. Therefore, this court should reverse

¹ Deleting the two counts of dealing in stolen property would decrease Mr. Salzman's guideline score from fifty down to twenty points, placing him in the next lower guideline cell. (R 20)

Mr. Salzman's "convictions" and vacate his concurrent probationary terms for dealing in stolen property.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Brenda S. Taylor, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 12 day of May, 1992.

Respectfully submitted,



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