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IN THE SUPREME COURT OF FLORIDA

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STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 79,311

ROBERT ARNDT,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

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STATE OF FLORIDA,

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\_\_\_\_\_ /

PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner, the State of Florida, will be referred to herein as either "Petitioner" or "the State". Respondent, Robert Arndt, defendant below, will be referred to herein as "Respondent". References to the record on appeal will be referred to herein by the symbol "R" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

Petitioner was sentenced as a habitual felony offender on August 7, 1991, based on eight prior burglary convictions, all of which had been entered on the same day (R 34-36). On appeal, the First District Court of Appeal reversed Petitioner's sentence and certified the following question as one of great public importance:

WHETHER SECTION 775.084(1)(a)1, FLORIDA STATUTES (SUPP. 1988), WHICH DEFINES HABITUAL FELONY OFFENDERS AS THOSE WHO HAVE "PREVIOUSLY BEEN CONVICTED OF TWO OR MORE FELONIES," REQUIRES THAT EACH OF THE FELONIES BE COMMITTED AFTER CONVICTION FOR THE IMMEDIATELY PREVIOUS OFFENSE?

Arndt v. State, 17 FLW D385 (Fla. 1st DCA January 31, 1992).

Notice to invoke this Court's discretionary jurisdiction was timely filed on February 3, 1992, and this Court issued an order postponing decision on jurisdiction and a briefing schedule on February 10, 1992.

SUMMARY OF ARGUMENT

Due to the brevity of the argument herein, a formal summary of the argument will be omitted.

ARGUMENT

ISSUE

WHETHER SECTION 775.084(1)(a)1, FLORIDA STATUTES (SUPP. 1988), WHICH DEFINES HABITUAL FELONY OFFENDERS AS THOSE WHO HAVE "PREVIOUSLY BEEN CONVICTED OF TWO OR MORE FELONIES," REQUIRES THAT EACH OF THE FELONIES BE COMMITTED AFTER CONVICTION FOR THE IMMEDIATELY PREVIOUS OFFENSE?

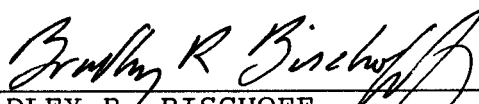
The question certified in the instant case was recently answered by this Court in the negative in State v. Barnes, 17 FLW S119 (Fla. February 20, 1992) (rehearing pending), attached hereto. It is settled, therefore, that Petitioner's habitual felony offender sentence based on prior felony convictions entered on the same day is a legal sentence.

CONCLUSION

Petitioner respectfully urges this Honorable Court to reverse the decision of the First District Court of Appeal below and reinstate Respondent's habitual felony offender sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been furnished by U.S. Mail to P. Douglas Brinkmeyer, Assistant Public Defender, Leon County Courthouse, Fourth Floor, North, 301 South Monroe Street, Tallahassee, Florida 32301, this 6<sup>th</sup> day of March, 1992.

  
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