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FILED
SID J. WHITE

IN THE SUPREME COURT OF FLORIDA

MAR 12 1992

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner,

v.

Case No.: 79,385

KENNETH EUGENE DAVIS,

Respondent.

_____ /

PETITIONER'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
<u>Issue</u>	4
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.	
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Barnes v. State,</u> 576 So. 2d 758 (Fla. 1st DCA 1991)	4
<u>Davis v. State,</u> 17 F.L.W. D420 (Fla. 1st DCA, February 5, 1992, case 91-00622)	4
<u>State v. Barnes,</u> 17 F.L.W. S119 (Feb. 20, 1992)	4,5
 <u>OTHER AUTHORITIES</u>	 <u>PAGE(S)</u>
Section 775.084(1)(a)1, Florida Statutes, (Supp. 1988)	4

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PETITIONER'S BRIEF ON THE MERITS

Preliminary Statement

Petitioner, plaintiff/appellee below, will be referred to herein as either "the State" or "Petitioner". Respondent, Kenneth Eugene Davis, defendant/appellant below, will be referred to herein as "Respondent".

STATEMENT OF THE CASE AND FACTS

Davis appealed the circuit court judgments and sentences entered for 51 felony convictions. Although the First District Court of Appeal affirmed the judgment without discussion, it reversed and remanded for resentencing because habitualization was predicated upon twenty-five prior felony convictions entered on the same date.

The district court 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.

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

SUMMARY OF THE ARGUMENT

Because of the brevity of the state's argument, a summary 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.

Appeal is taken from the opinion of the First District Court of Appeal in Davis v. State, 17 F.L.W. D420 (Fla. 1st DCA, February 5, 1992, case 91-00622), in which the underlying judgment and sentence was affirmed but habitual felony offender determination based upon prior felony convictions entered contemporaneously was reversed.

The district court 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.


This question, certified originally in Barnes v. State, 576 So. 2d 758 (Fla. 1st DCA 1991), has been resolved by this court in favor of the state in State v. Barnes, 17 F.L.W. S119 (Feb. 20, 1992).

CONCLUSION

The State asks this court to hold consideration of this appeal in abeyance until State v. Barnes, supra, becomes final, then quash the decision of the district court as it relates to the certified question on the authority of State v. Barnes, 17 F.L.W. S119 (February 20, 1992) and remand for further proceedings consistent with Barnes so that Respondent's habitual felony offender sentence may be reinstated..

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to David P. Gauldin, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 13th day of March, 1992.


MARILYN MCFADDEN
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