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**FILED**  
SID J. WHITE  
APR 7 1992  
CLERK SUPREME COURT  
By: [Signature]  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 KENNETH EUGENE DAVIS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

CASE NO. 79,385

RESPONDENT'S BRIEF ON THE MERITS

NANCY A. DANIELS  
PUBLIC DEFENDER

DAVID P. GAULDIN  
ASSISTANT PUBLIC DEFENDER  
FLA. BAR NO. 261580  
SECOND JUDICIAL CIRCUIT  
LEON COUNTY COURTHOUSE  
FOURTH FLOOR NORTH  
TALLAHASSEE, FLORIDA 32301  
(904)488-2458

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
I PRELIMINARY STATEMENT	1
II STATEMENT OF THE CASE AND FACTS	2
III SUMMARY OF ARGUMENT	3
IV ARGUMENT	
<u>CERTIFIED QUESTION/ISSUE PRESENTED:</u>	
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.	4
V CONCLUSION	5
CERTIFICATE OF SERVICE	5
APPENDIX	A 1-2

II STATEMENT OF THE CASE AND FACTS

Respondent accepts the state's statement as reasonably accurate.

### III SUMMARY OF ARGUMENT

A summary of argument will be omitted due to the nature of this case.

IV ARGUMENT

CERTIFIED QUESTION/ISSUE PRESENTED

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 Court recently decided this issue in State v. Barnes, 17 FLW S119 (Fla. Feb. 20, 1992), quashed Barnes v. State, 576 So.2d 758 (Fla. 1st DCA 1991), and held that prior convictions need not be sequential under the 1988 habitual offender statute. In the companion cases of State v. Goodman, 17 FLW S131 (Fla. Feb. 20, 1992), State v. Razz, 17 FLW S131 (Fla. Feb. 20, 1992), State v. Price, 17 FLW S131 (Fla. Feb. 20, 1992), and State v. Martin, 17 FLW S130 (Fla. Feb. 20, 1992), this Court reached the same result under the 1989 habitual offender statute.

V CONCLUSION

Unless this Court is willing to alter its opinion in Barnes, the issue has been decided adversely to respondent.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

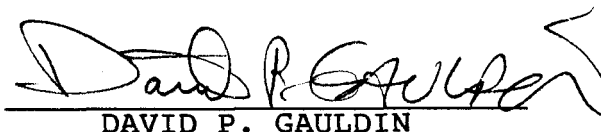


DAVID P. GAULDIN  
ASSISTANT PUBLIC DEFENDER  
FLORIDA BAR NO. 261580  
LEON COUNTY COURTHOUSE  
FOURTH FLOOR, NORTH  
301 SOUTH MONROE STREET  
TALLAHASSEE, FLORIDA 32301  
(904) 488-2458

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been forwarded by hand delivery to Marilyn McFadden, Assistant Attorney General, The Capitol, Tallahassee, Florida; and a copy has been mailed to Respondent, Kenneth Eugene Davis, DC #927076, North Florida Reception Center, Post Office Box 628, Lake Butler, FL 32054-0628 this 9th day of April, 1992.



DAVID P. GAULDIN

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, )  
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 Petitioner, )  
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 vs. )  
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 KENNETH EUGENE DAVIS, )  
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CASE NO. 79,385

A P P E N D I X

PD

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

KENNETH EUGENE DAVIS,  
Appellant,

) NOT FINAL UNTIL TIME EXPIRES TO  
) FILE MOTION FOR REHEARING AND  
) DISPOSITION THEREOF IF FILED.

vs.

) CASE NO. 91-00622

STATE OF FLORIDA,  
Appellee.

)  
)  
)

Opinion filed February 5, 1992.

An Appeal from the Circuit Court for Escambia County.  
Frank Bell, Judge.

Nancy A. Daniels, Public Defender, and David P. Gauldin,  
Assistant Public Defender, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General, and Marilyn McFadden,  
Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

This cause is before us on appeal from judgments and sentences entered for 51 felony convictions. We affirm without discussion the judgments. However, we must reverse and remand for resentencing under the authority of Barnes v. State, 576 So. 2d 758 (Fla. 1st DCA 1991). We certify 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

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PUBLIC DEFENDER  
2nd JUDICIAL CIRCUIT



EACH OF THE FELONIES BE COMMITTED AFTER CONVICTION  
FOR THE IMMEDIATELY PREVIOUS OFFENSE.

BOOTH, SHIVERS, AND MINER, JJ., CONCUR.