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FILED

SIB J. WHITE

MAY 7 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

MILTON GIDDEN,

Petitioner,

v.

CASE NO. 79,387

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

The district court correctly decided that the requirements for an order of indirect criminal contempt, provided in Rule 3,840(a)(6), Fla.R.Crim.P., are fulfilled when the trial court makes oral findings on the record because the purposes of the rule are accomplished by a trial court's recitation of its findings on the record.

ARGUMENT

THE DISTRICT COURT CORRECTLY DECIDED
THAT THE REQUIREMENTS OF RULE
3.840(A)(6) ARE FULFILLED WHEN ORAL
FINDINGS ARE MADE ON THE RECORD.

The district court decided that the requirements for an order of indirect criminal contempt, provided in Rule 3.840(a)(6), Fla.R.Crim.P., are fulfilled when the trial court makes oral findings on the record. Petitioner erroneously argues that a written recital of the findings must be included in the order, as is required in orders of direct criminal contempt.

Petitioner's argument ignores the distinction between the provisions for orders of indirect criminal contempt and direct criminal contempt. The rule for indirect criminal contempt, Rule 3.840(a)(6), Fla.R.Crim.P., provides in part as follows:

There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the defendant has been found and adjudicated guilty. [Emphasis added,]

This is contrast to the rule for direct criminal contempt, Rule 3.830, Fla.R.Crim.P., which provides in part as follows:

The judgment of guilt of contempt shall include a recital of those facts upon which the adjudication of guilt is based. [Emphasis added.]

The difference between should and shall is significant. The district court decision is based on the fact that the oral findings were the basis of the reasons for the district court decision. The district court held that oral findings were the basis of the decision, and that written findings were discretionary, not mandatory.

The district court also held that the oral recital of the factual findings fulfilled the purpose of rule 3.840(a)(6). The

district court held that "a trial court is required to set forth the facts upon which its order of indirect criminal contempt is based in order to advise the accused and to permit meaningful appellate review" and that both purposes are accomplished by a trial court's recitation of its findings on the record. The court cited *White v. Buck*, 505 So.2d 36 (Fla. 5th DCA 1987) and *Alexander v. State*, 576 So.2d 350 (Fla. 5th DCA 1991) in support of its holding.

The district court decision in the instant case follows *Barnhill v. State*, 438 So.2d 175 (Fla. 1st DCA 1983), which held that the **requirements** of Rule 3.840(a)(6) were met in this case by the trial judge orally stating in the record the underlying facts constituting the contempt. *Barnhill* was also followed in *Barbosa-Fernandez v. State*, 585 So.2d 1134, 1136 (Fla. 3rd DCA 1991).

The only case cited which directly supports petitioner's argument is *Hofeling v. Hofeling*, 546 So.2d 1176 (Fla. 2nd DCA 1989). *Hofeling* cites *White v. Buck*, *supra*, as authority. In the district court decision in the instant case, the court pointed out that *White v. Buck* did not consider oral findings on the record and was therefore distinguishable. The district court also held that it **receded** from any language in the *White v. Buck* to the extent it may be read to require written findings in a judgment of indirect criminal contempt where the judge's findings on the record advise the defendant of the basis for the judgment and permit meaningful appellate review. Therefore, the authority in support of petitioner's argument has been receded from.

CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully requests the court to affirm the district court decision in the instant case.

Respectfully submitted,

**ROBERT A. BUTTERWORTH
ATTORNEY GENERAL**

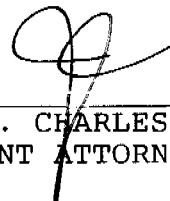


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CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that a true and correct copy of the above **and** foregoing Respondent's Brief on the Merits has been furnished by delivery to Kenneth Witts, Assistant Public Defender, counsel for the petitioner, 112 Orange Avenue, **Suite** A, Daytona Beach, Florida 32114, this 5th day of May, 1992.



**JAMES N. CHARLES
ASSISTANT ATTORNEY GENERAL**