IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

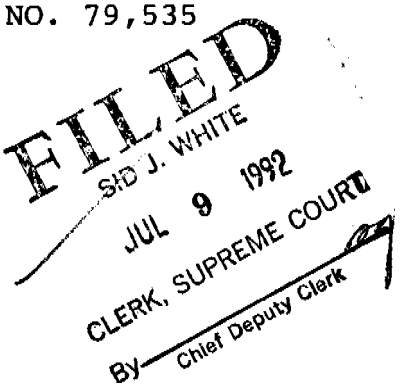
Petitioner,

v.

CASE NO. 79,535

WILLIE LEE ANDERSON,

Respondent.




# RESPONDENT'S BRIEF ON THE MERITS

NANCY A, DANIELS
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SECOND JUDICIAL CIRCUIT

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## RESPONDENT'S BRIEF ON THE MERITS

### PRELIMINARY STATEMENT

Respondent, WILLIE ANDERSON, was the appellant below, and will be referred to herein by his proper name, or as "respondent." The State of Florida was the appellee below, and will be referred to herein as "state" or as "petitioner." The initial brief of petitioner will be referred to by the letters "IB" followed by the applicable page number.

## STATEMENT OF THE CASE AND FACTS

Respondent accepts the state's statement of the case and facts.

## SUMMARY OF ARGUMENT

The opinion of the First District Court of Appeal in Anderson v. State, does not conflict with any decision of this Court, or undermine any decision of this Court, particularly Eutsey v. State, 383 So.2d 219 (Fla. 1980). The opinion of the appellate court conforms with the legislative intent, and with judicial interpretation of the habitual felony offender statute, and should be confirmed by this Court.

## ARGUMENT

ISSUE PRESENTED

DOES THE HOLDING IN EUTSEY V. STATE, 383 SO.2D 219 (FLA. 1980), THAT THE STATE HAS NO BURDEN OF PROOF AS TO WHETHER THE CONVICTIONS NECESSARY FOR HABITUAL FELONY OFFENDER SENTENCING HAVE BEEN PARDONED OR SET ASIDE, IN THAT THEY ARE "AFFIRMATIVE DEFENSES'' AVAILABLE TO [A DEFENDANT]," EUTSEY AT 226, RELIEVE THE TRIAL COURT OF ITS STATUTORY OBLIGATION TO MAKE FINDINGS REGARDING THOSE FACTORS, IF THE DEFENDANT DOES NOT AFFIRMATIVELY RAISE, AS A DEFENSE, THAT THE QUALIFYING CONVICTIONS PROVIDED BY THE STATE HAVE BEEN PARDONED OR SET ASIDE?

The issue presented to this Court has arisen from an application below of long-standing statutory interpretation by this Court of the habitual offender statute. The decision below was based on sound judicial principles and reasoning, and should be affirmed by this Court.

The first significant case of this Court to address the fact finding requirements of the habitual felony offender statute was Eutsey v. State, 383 So.2d 219 (Fla. 1980), which was primarily focused on the due process rights of an accused at sentencing. At the trial level in Eutsey, the judge made the findings as required by the statute. This court recited those facts, as follows:

> At the conclusion of the hearing, the trial court found, beyond and to the exclusion of every reasonable doubt, that Eutsey is the same person who was convicted of attempted robbery on January 23, 1976, and received a three-year sentence; that he is the same person who was convicted on July 20, 1978, of burglary in the present case; that each is a felony; and that the latter conviction was within five years of

> the earlier conviction, and commission of the latter crime was within nineteen or twenty days after Eutsey's release from prison on the first felony for which he was sentenced. The court further found that Eutsey had not received a pardon and that his convictions had not been set aside in post-conviction relief proceedings. The court went on to make extensive specific findings relative to its conclusion that an enhanced penalty was necessary for the protection of the public. The court then sentenced Eutsey to twenty-five years in prison. (Id. at 223).

It appears that Eutsey's primary complaint about the trial court's findings was centered on the finding relative to the conclusion that an enhanced penalty was necessary for the protection of the public, a finding that is no longer required by statute. This Court recognized the rationale behind the requirement for the findings when it stated: "The findings of the trial court in the present case are more than sufficient to make Eutsey's appeal of his enhanced sentence meaningful." (Id, at 226) (e.s.)

This Court then held that the state did not have to prove Eutsey had not been pardoned, or prove that previous offenses had not been set aside in post-conviction proceedings "since these are affirmative defenses," (Id, at 226). This Court did not, however, excuse the trial court from making the findings.

The fact that the trial court is not excused from making the findings is highlighted by Justice England's concurring/dissenting opinion, in which he expressed his desire that the findings be in writing, to facilitate meaningful appeals from enhanced sentences. The Justice was concerned

that "the appellate court will be put in a position of duplicating the sentencing function which is properly and exclusively that of the trial court" (Id. at 227).

The next significant decision regarding this issue is this Court's opinion in Walker v. State, **462** So.2d **452 (Fla. 1985).** In Walker, the trial court did not specifically state the findings upon which it based the decision to extend Walker's sentence, and Walker did not contemporaneously object. The First District Court of Appeal dismissed Walker's appeal, with leave to pursue post-conviction relief. This decision conflicted with one arising from the Third District Court of Appeal. This Court took the view of the Third District Court with respect to the importance of the statutory findings, and held

> . . . that the findings required by section 775.084 are critical to the statutory scheme and enable meaningful appellate review of these types of sentencing decisions. Without these findings, the review process would be difficult, if not impossible. It is clear that the legislature intended the trial court to make specific findings of fact when sentencing a defendant as a habitual offender. Given this mandatory statutory duty, the trial court's failure to make such findings is appealable regardless of whether such failure is objected to at trial. (Id. at **454)** (e.s.).

This Court did not pick and sort among the findings to establish which were vital and which were not. Instead, it recognized the clear language and intent of the legislature that all statutorily delineated findings were vital.

Had the legislature intended contrary to the decision of this Court, it has had ample time to adopt corrective legislation, but has chosen not to. And it cannot be said that the legislature has failed to act from inadvertence or careless oversight, because it has amended the findings requirement since Parker, but only by deleting the requirement that a judge find enhanced sentencing necessary for the protection of the public.' As the state noted in its initial brief, re-enactment of a statute following judicial interpretation thereof is presumed to adopt and confirm that judicial treatment (IB 13).

The most recent decision of this Court addressing the findings requirement of the habitual felony offender statute is Parker v. State, 546 So.2d 727 (Fla. 1989). In Parker, this Court declined to rule that it would be a better practice to reduce the trial court's findings to writing, thus affirming its holding in Eutsey, noting in doing so that the habitual felony offender statute itself did not require that the findings be in writing. The Parker decision did not in any way minimize the duty of the trial court to make the findings required by statute.

District Courts of Appeal have relied on these decisions. Rolle v. State, 586 So.2d 1293 (Fla. 4th DCA 1991), was cited by the First District Court, together with Walker and Parker in

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'Section 6, Chapter 88-131, Laws of Florida, presently 775.084(3).

the Anderson decision. The state has attempted to eliminate the authority of Rolle by stating in its brief that "Rolle, without setting out the facts of the case or even the year of the statute at issue, simply holds that the trial court failed to make unspecified statutorily required findings . . ." (IB 9) (e.s.). Appellant would respectfully point out that the facts necessary for the decision in Rolle were indeed set forth, as follows:

> The record shows that at the sentencing hearing the state recited appellant's record of prior convictions. The trial court, however, made no findings as required by section 775.084(1)(a). (Id. at 1293).

And, appellant notes that the findings requirement has remained virtually unchanged from the inception of the statute. The Rolle decision is solid, based on the solid authority of this Court's earlier decisions in Parker, supra and Walker, supra.

It is clear from these decisions of this Court spanning a decade that judicial compliance with the requirements of the statute is vitally important to the offender, and to the appellate process. The Anderson decision of the First District Court of Appeal is solid law, grounded on the foundation of legislative mandate and confirming judicial interpretation.

The state has reacted in a near-hysterical manner, conjuring for this Court a smoke and mirrors horror story of a judicial system collapsed under the weight of the Anderson decision (IB 18-19). The state overlooks the rationale behind this Court's decisions, i.e., to provide meaningful appellate

review, and prevent appellate courts from needless repetition of sentencing procedures. There is no conflict between Anderson and Eutsey, either in letter or spirit. This Court should confirm the decision of the First District Court of Appeal by answering the certified question in the negative.

## CONCLUSION

Respondent requests this Court confirm the decision of the court below, and answer the certified question of the First District Court of Appeal in the negative.

Respectfully submitted,

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PUBLIC DEFENDER
**SECOND JUDICIAL CIRCUIT**

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**ATTORNEY FOR RESPONDENT**

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Carolyn J. Mosley, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to respondent, WILLIE **ANDERSON, #899991, New** River Correctional Institution, Post Office Box 333, Raiford, Florida 32083, on this 9th day of **July, 1992.**

CAROL ANN TURNER