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**FILED**

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CLERK, SUPREME COURT.

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Chief Deputy Clerk

**IN THE SUPREME COURT  
STATE OF FLORIDA**

**STEVE ALAN BAMBERG,**

Petitioner,

v.

Case No. 80,019

**STATE OF FLORIDA,**

Respondent.

\_\_\_\_\_ /

Discretionary Review of Decision of  
the District Court of Appeal,  
Second District of Florida

BRIEF ON THE MERITS

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SUMMARY OF THE ARGUMENT

The trial court properly imposed an extended term of probation after Appellant had been habitualized.

ARGUMENT

ISSUE I

**THE TRIAL COURT PROPERLY SENTENCED  
APPELLANT AS A HABITUAL FELONY  
OFFENDER.**

Appellant alleges that the trial court erred when it imposed a habitual felony sentence. Further, Appellant alleges that the court erred when it imposed a habitualized extended probationary term.

The trial court did not err. The Second District Court of Appeal held in King v. State, 597 So.2d 309 (Fla. 2d DCA 1992) that the trial court may impose probation even when the court has made a finding that the defendant is a habitual offender. In the present case, the court found and the record supports that Appellant qualified as a habitual felony offender pursuant to §775.084, Florida Statutes. The court provided Appellant with notice that he would be treated as a habitual felon (R. 4). Appellant had been convicted of two or more felony offenses prior to habitualization (R. 61 through 71). He was previously convicted of Possession of Controlled Substances and Possession of Narcotic Paraphernalia in Case Number 85-4610 CF (R. 61, 63). Also, Appellant was convicted in Case Number 87-3553 A1XX of Grand Theft; Case Number 87-5115 A1XX of Possession of Methamphetamine; and in Case Number of 88-0227A1-XX of Burglary and Grand Theft (R. 70, 72, 75, 77, 80, 82). The crimes were committed by Appellant within a five year span.

The judgment and sentence imposed by the court is not contrary to §775.084, Florida Statutes. The

trial court had the discretion to be lenient even when imposing a habitual felony sentence. Williams v. State, 581 So.2d 144 (Fla. 1990); Burdick v. State, 594 So.2d 267 (Fla. 1992). Moreover, the Second District Court of Appeal has affirmed the lower court's judgment in this case and opined that, "this Court has held in an en banc opinion that the trial court may impose probation even when the court has made a finding that defendant is a habitual offender." Bamberg v. State, 17 F.L.W. 1421 (Fla. 2d DCA June 2, 1992).

Within the meaning of Williams v. State, 581 So.2d 144 (Fla. 1991), Burdick v. State, 594 So.2d 267 (Fla. 1992), and King v. State, 597 So.2d 309 (Fla. 2d DCA 1992), the trial court could have sentenced Appellant as a habitual offender and impose an extended period of probation after he had been habitualized. Therefore, the judgment and sentence imposed by the court must be affirmed.

CONCLUSION

Based upon the foregoing facts, arguments and authorities,  
the judgment and sentence should be affirmed.

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 Jennifer Fogle, Assistant Public Defender, P. O. Box 9000 Drawer PD, Bartow, Florida 33830, on this 9<sup>th</sup> day of November, 1992.

  
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