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CLEM, SUPREME COURT
By _____
Chief Deputy Clerk

SUPREME COURT OF FLORIDA
TALLAHASSEE , FLORIDA

HAMPTON ALONZO CORRY,

Appellant,

vs .

THE STATE OF FLORIDA,

Appellee.

SUPREME COURT CASE KO: 80,173
5TH D.C.A. CASE NO: 91-0086
L.T. CASE NO : 88-9227-CFAES

_____ /

APPELLANT'S BRIEF IN SUPPORT OF DISCRETIONARY REVIEW

HAMPTON ALONZO CORRY
APPELLANT, PRO SE
SUMTER CORRECTIONAL INSTITUTION
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TABLE OF CITATIONS

1. Lambert v. State, 545 So. 2d. 838 (Fla. 1989).
2. Scott v. State, 550 So. 2d. 1111 (Fla. 4th DCA 1989).
3. Snead v. State, (5th DCA 1992) - opinion filed May 22, 1992, Case No. 91-2293.
4. Steiner v. State, 591 So. 2d. 1070 (Fla. 2nd DCA 1990).

PRELIMINARY STATEMENT

The Appellant, Hampton Alonzo Corry, will be referred to as the Appellant.

The Appellee, the State of Florida, will be referred to as the Fifth District Court of Appeal, or the Lower Appellate Tribunal and Trial Tribunal.

STATEMENT OF THE CASE AND FACTS

On or about the month of November, 1988, the Appellant was sentenced to 5½ years and 2 years of probation in the Seventeenth Judicial Circuit of Volusia County - L.T. Case No. #88-9227-CFAES. The Appellant was released from the Department of Corrections custody after serving the portion of his split sentence of 5½ years. The Appellant violated his probation condition and the trial court re-sentenced the Appellant as a habitual offender with 15 years on the sentence that the Appellant had already completed. Thus, also this trial court sentenced the Appellant to a 10 year sentence to run consecutive. The Appellant appealed this case before the Fifth District Court of Appeals. However, the 5th D.C.A. on 7/13/92 affirmed the Appellant's Judgment and Sentence, citing William C. Snead v. State of Florida, 5th DCA 91-2293; opinion filed May 22, 1992.

Therefore, thus due to the light of the law, Snead was in conflict with Scott, and Scott's case was called for a reversal. This Court must find the same fruits exist here in the Appellant's case.

Thus, due to the opinion filed by the 5th D.C.A. of Florida, citing Snead. This Appellant finds a conflict of interest with the Scott case and several other cases that are the controlling authority of this Issue.

SUMMARY OF THE ARGUMENT

Whether the habitual offender statute can be applied to a defendant who was originally subjected to the statute but was instead placed on probation, whose probation was later revoked for a technical violation.

Lets keep in mind that the Appellant **was** sentenced to the Department of Corrections and completed the first part of his split sentence, which was 5½ years. The case that the Fifth District Court of Appeals cited that it affirmed the Appellant's case upon. Snead never was sentenced to D.O.C. Snead started his sentence on **probation**. Therefore, according to case and statutory law, the re-sentencing of the **Appellant** to (15) years is completely illegal and void where the Appellant had indeed complete that portion of his sentence.

One of the questions this Court must address is whether it was permissible to utilize the habitual offender statute to enhance the Appellant's sentence for violating probation without a new committed charge.

ARGUMENT

**WHETHER THE TRIAL COURT ERRED IN SENTENCING
THE APPELLANT AS A HABITUAL OFFENDER AFTER
REVOKING APPELLANT'S PROBATION.**

The Appellant's appeal was denied for relief from the Fifth District Court of Appeal on June 12, 1992 - Case No. #92-00086. Appellant submits these supporting facts for a discretionary review concerning this issue.

On or about the month of November of 1988, the Appellant was sentenced to 5½ years and 2 years of probation to follow after Appellant is released from the Department of Corrections custody. Upon being released from the Department of Corrections the Appellant violated his 2 year probation conditions and was resentenced as a habitual offender on the same cases on the date of 12-12-91. Thus in the light of the facts and records, the Appellant only committed a technical violation. No new offense was committed.

The questions here are:

1. Whether or not the trial court could sentence the Appellant as an habitual offender without a newly committed offense.
2. Whether or not the trial court can re-sentence the Appellant on the portion of the sentence that he had served in the Department of Corrections.
3. Whether or not the trial court can re-sentence the Appellant to a consecutive sentence, when in fact, the first sentences pronounciation was to run concurrently.
4. Whether it was permissible to utilize the habitual offender statue to enhance the Appellant's sentence for violating probation with technical violations.

Thus, in **the** light of the law, it was error for the trial court to re-sentence the Appellant to 15 years for a sentence that Appellant has served in it's complete term.

Thus, it was error for this trial court to re-sentence the Appellanr as a habitual offender to enhance the Appellant's sentence of 2 years of probation to a 10 year sentence to run consecutive with the (H.B.O.)

The Fifth District Court of Appeal came in agreement with the Lower Tribunal Court upon affirming the Appellant's case, citing Snead v. State, (5th DCA 1992) - **Case No. 91-2293, opinion filed May 22, 1992.** The Appellant here notes rhat Snead never was sentenced to prison. The Appellant completed his first sentence of 5½ years for delivery and sells of cocaine, rherefore it was improper for the 5th D.C.A. to denie the Appellant the relief upon Snead, where **Snead** is not an applicant here in Appellant's case.

The Appellant now rests upon; Scott v. State, 550 So. 2d. 111 (Fla. 4th DCA 1989), *rev. denied* 560 So. 2d. 235 (Pla. 1990). Also Lambert v. State, 549 So. 2d. 838 (Fla. 1983) and Steiner v. State, 591 So. 2d. 1070 (Fla. 2nd DCA 1992).

Thus, based upon tHe light of the facts, Snead's case is totally contrary to the Appellant's case. The **Snead** Court being in conflict with SCott v. State, 560 so. 2d. 235 (Fla. 1990 4th D.C.A.) should here upon this discretionary review nullify the Lower Appellate Court decision, and remand this Appellant's case back to the Lower Trial Court for re-sentencing with instructions disallowing the trial court from re-sentencing the Appellanr as a habitual offender according to **Scott, Lambert and Steiner**. Thus, the Appellant's first part of his sentence was complete. Therefore, the Florida Supreme Court must now allow this lower tribunal court: to re-sentence this Appellant to a completed sentence. Furthermore, because the Appellant violated probation upon a

technical violating was not reasons for such grounds for departure.

In Cambert v. Court, 545 So. 2d. 838 (Fla. 1989), the Court found that "factors related to violation of probation or community control cannot be used as grounds for a departure," Id. at 842.

Therefore, every part of the Appellant's sentence is in violation of Florida case and statutory case law. Thus, this Appellant's sentence in it's entirety must be reversed and remanded back with proper instructions.

CONCLUSION

Therefore, the Appellant would **respectfully request** that the **court** remand this case back to the Circuit Court for re-sentencing in accordance with Florida Rules of Criminal Procedure 3.701(d)(14)(1991), and whatever means are **deemed promptly** and accordingly.

Respectfully Submitted,

Hampton Alonzo Corry

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Brie of the Appellant has been mailed by U.S. Mail to: The Office of the Clerk for the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, this 21st day of September, 1992, and to the Attorney General, Daytona Beach Regional Office, 210 N. Palmetto Ave., Suite 447, Daytona Beach, Florida 32114 this 21st day of Seprember, 1992.

Hampton Alonzo Corry

HAMPTON ALONZO CORRY, PRO SE