

FILED

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FEB 15 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THOMAS SHEPPARD, :

Petitioner ,

vs.

Case No. 80,418

STATE OF FLORIDA,

Respondent.

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS AND SUMMARY OF THE ARGUMENT

Petitioner relies on the Statement of the Case and **Facts** and Summary of the Argument as set forth in the initial merit brief .

ARGUMENT

ISSUE I

WHETHER CHAPTER 89-280, LAWS OF FLORIDA, WHICH AMENDED SECTION 775.084, FLORIDA STATUTES (1989), VIOLATES THE SINGLE SUBJECT REQUIREMENT OF THE FLORIDA CONSTITUTION?

The Respondent argues that this Court should ignore the true facts of **this** case. Because the State appealed the trial court's finding that the habitual offender statute's amendments were unconstitutional and managed to obtain a stay of sentencing for 10 months (forcing Mr. Sheppard to sit in the county jail, earning no gain time, and denying him his constitutional right to an expeditious sentencing), Mr. Sheppard was not sentenced **as** an habitual offender until September 8, 1992--after the Second District Court of Appeal's opinion **finding** the habitual offender amendments to be constitutional **was decided**. Mr. Sheppard **was** sentenced **as** an habitual offender at that time (see attached) . Mr. Sheppard, however, continued his appeal of the Second District Court of Appeal's unfavorable--and now incorrect--decision to this Court. To hold that his sentence is not properly before this Court would be to ignore reality; to ignore the **fact that** his habitual

sentence is based solely on the issue **set** forth in State v. Johnson, Nos. 79,150 and 79,204 (Fla. Jan. 14, 1992); and to create additional litigation that **would** further delay **a** correction of Mr. Sheppard's sentence. Since the **State** is responsible for delaying Mr. Sheppard's sentence and causing him irreparable harm, **it** should be estopped **from** arguing his failure to be sentenced **as a** reason for denying Mr. Sheppard the relief he is entitled to. This Court should reverse and remand Mr. Sheppard's sentence under this Court's decision in Johnson .

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to William I. Munsey, Jr., Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 12~~3~~ day of February, 1993.

Respectfully submitted,



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