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CLERK, SUPREME COURT.

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IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,488

BENNIE LEE PEARSON,

Petitioner/Appellant,

vs.

THE STATE OF FLORIDA,
Respondent/Appellee.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF ON THE MERITS OF RESPONDENT/APPELLEE

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PRELIMINARY STATEMENT

The Petitioner, BENNIE LEE PEARSON, was the appellant in the court below and the defendant in the Circuit Court. The Respondent, THE STATE OF FLORIDA, was the appellee in the District Court and the prosecution in the trial court. The parties will be referred to, in this brief, as they stand before this court. The symbol "App." will refer to the Appendix to Appellant's Jurisdictional Brief. All emphasis is supplied unless otherwise indicated.

ISSU PRESENTED FOR LIEW

WHETHER THE DEFENDANT, CONVICTED OF A LIFE FELONY, COULD PROPERLY BE SENTENCED AS A HABITUAL OFFENDER?

SUMMARY OF THE ARGUMENT

It appears that the decision in this case, insofar as it relies on <u>Lamont v. State</u>, 597 So.2d 823 (Fla. 3d DCA 1992), has been quashed by this court in <u>Lamont v. State</u>, 18 F.L.W. S5 (Fla. December 24, 1992).

ARGUMENT

WHETHER THE DEFENDANT, CONVICTED OF A LIFE FELONY, COULD PROPERLY BE SENTENCED AS A HABITUAL OFFENDER?

It appears that the decision in this case, insofar as it holds, based on Lamont v. State, 597 So.2d 823 (Fla. 3d DCA 1992), that life felonies are subject to enhancement under the habitual offender statute, F.S. g775.084 ((1989), has been quashed by this court in Lamont v. State, 18 F.L.W. S5 (Fla. December 24, 1992).

CONCLUSION

Based upon the foregoing, it appears that that portion of the opinion of the Third District which relies on Larnont v. State, 597 So.2d 823 (Fla. 3d DCA 1992) for the proposition that life felonies may be enhanced under the Habitual Offender Statute must be quashed and remanded for further proceedings. The Opinion should otherwise be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF ON THE MERITS OF RESPONDENT/APPELLEE was furnished to SHERYL J. LOWENTHAL, Special Assistant Public Defender, 2600 Douglas Road, Suite 911, Coral Gables, Florida 33134 on this 19thday of January, 1993.

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