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FEB 4 1993
CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

CASE No 80,666

ELISAMES HARRIS
Petitioner

-vs-

THE STATE OF FLORIDA
Respondent.

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL FOR THE THIRD DISTRICT STATE OF FLORIDA

REPLY BRIEF OF PETITIONER

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*I

INTRODUCTION

The Petitioner was the appellant in the district court below, and the Respondent was the appellee in the proceedings below. The parties will be referred to by their names respectively or by Petitioner or Respondent.

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ARGUMENT IN RESPONSE

THAT FLORIDA STATUTE SECTION 775.084 (AMENDED 1989) VIOLATES THE SINGLE SUBJECT RULE OF THE FLORIDA CONSTITUTION

The State of Florida, Respondent herein, has erroneously presented the claim that the Petitioner would have been habitualized under s.775.084 "because of several prior felony convictions, including robbery, attempted robbery and burlary." (Brief at page 6).

This is maliciously erroneous. The record in this case conclusively shows based on the very documentation submitted by the Respondent that Petitioner was habitualized only on the charges in the instant case, i.e., strong arm robbery, case no. 90-41212, robbery, case no. 90-39359 and grand theft, case no. 90-42332. There are no convictions of robbery by force attempted robbery with a firearm and burglary of a structure. (R-16-90)[1] submitted in the record

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[1] The record on appeal in this case constitute the documents filed in the Third District Court of Appeal case no. 92-653. The documents were provided by the State of Florida in response to the order of that court to do same. The record before the court clearly shows that the court apparently habitualized the petitioner based on the instant charges in the different cases all of which were plead to on the same day. However, the most incredible situation is case no. 90-42332, which according the files and records, was committed on November 13, 1990. The court record submitted by the State of Florida shows conclusively

to support the position taken by the Respondent here.(Infact, not even certified convictions to establish that the Petitioner is the one that is allegedly the person that was convicted for these crimes for purposes of habitualization.

What is the importance of the issue now, is whether the Petitioner would have been habitualized under the pre-amended statute, as opposed to the amended statute. The answer is still no.[2] The record in this shows that the

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that at the time of the commission of this offense, the petitioner was in custody on that date of November 13, 1990. (R-83-App.K) The Petitioner was never out of custody until sentencing in January 1991, to see his dying sister. This incrediably charges and convicts the petitioner for a crime that was utilize to habitualize him while he was in custody. Literally, a crime he could not commit at any point. Taking the statement of the respondent at face value, the record of the pleading show that Petitioner was sentenced for criminal offenses that were completed in between 1983 to 1984, from the point of his termination of sentence. Those judgment and convictions were beyond the five year period for consideration purposes of habitualization under the statute., i.e., s.775.084., F.S. cf. Lamont v. State, ___So.2d___(18 Fla.L.Wkly S25)(Fla. 1993). Hence Petitioner still could not be habitualized under the previous statute absent the amendment. To be habitualized on felony preclude the habitualization on the other felony is the time frame for any prior precluded its consideration.

[2] Like the law in Bunnell, Chapter 89-280 is a two-subject law: it is not a comprehensive one. The relationship between recidivits and repossessors of cars and boates is even more tenuous than the relationship between the obstructio of justice by providing false information and reduction in the membership of the Florida Criminal Justice Council. Accordingly, the inescapable conclusion is that Chapter 89-280 violates the one-subject rule and is unconstitutional

Petitioner could not be habitualized since he did not meet the criteria for habitualization for [prior] felony convictions within the five year period. And second, Grand Theft was literally not committed by the Petitioner since he was in custody, and, that Grand Theft is not listed in the numerated felony list for habitualization under s.775.084. Florida Statute, (amend)(1989). At a minimal, only one of the felonies robbery could be use for enhancement since the other charge would have to wait for the conviction inorder to enhance the sentence. This means, if the petitioner is to be habitualized on one of the robbery charges, the prior robbery charge would have to result in a conviction and sentence first. Then the second robbery charge could have been enhanced for habitualization purposes, notwithstanding the grand theft. That is the only method available. Of course, since this was a plea, and since the plea colloquy certainly does not explain this in any form, the enhancement under s.775.084., here, clearly shows from the face of the record to be erroneous, and unconstitutional in light of Johnson v. State, ___So.2d___(18 Fla.L.Wkly S__)(Fla. Jan 14, 1993).[3]

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[3] The District Court of Appeal issued it's opinion affirming the decision of the trial court by citing the decision of Beaubrum v. State, 595 So.2d _____(Fla. 3rd DCA 1992), which

The judgment of the district court upholding the constitutionality of s.775.084(amend)(1989) must be quash and remanded. The habitualization of the petitioner in this case should be vacated and the cause remanded for further proceedings.

Section A.

THE STATUTE IS FACILLY UNCONSTITUTIONAL BECAUSE IT PENALIZES DEFENDANTS FOR THEIR STATUS AS HABITUAL FELONY OFFENDERS.

The Petitioner relies on the argument presented in his Initial Brief on this issue in light of the constitutional question presented.

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incorporates the decision of the Fourth District Court of Appeal in McCall v. State, (cite omitted) (see App. pg.) and therefore holding that section 775.084 did not violate the single subject rule of Article III, section 6, Florida Constitution. The Petitioner then filed his Notice of Discretionary Review in this Court of the decision of the Third District Court on the basis of conflict of decisions between district court of appeals and the granting of review in McCall, supra., and particularly Beaubrum, supra., by this court. The Constitution of the State of Florida, Art. V., that this court will still address an erroneous action and adhere to its jurisdiction in the original when a manifest injustice has been done and it can correct the wrong.

Section B.

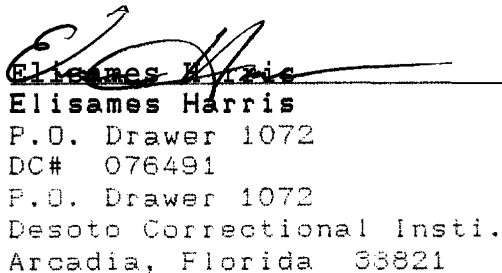
THE STATUTE IS FACIALLY UNCONSTITUTIONAL IN VIOLATION OF DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 9 OF THE FLORIDA CONSTITUTION.

The Petitioner relies on the argument presented in his Initial Brief on this issue in light, of the constitutional question presented.

CONCLUSION

The Petitioner moves this court to quash the decision of the Third District Court of Appeal and remand to that court for further proceedings not inconsistent with its opinion.

Respectfully submitted



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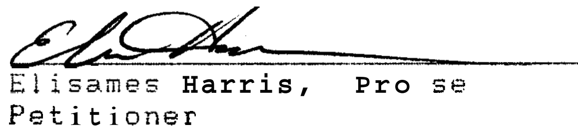
CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the afore has been furnished to Counsel for the Respondent, **CONSUELO MAINGOT**, Assistant Attorney General, 401 Northeast 2nd Avenue, Department of Legal Affairs, Miami, Florida, 33128, this =day of January, 1993, by U.S. Mail.



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