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SID J. WHITE

JAN 5 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :
 :
 Petitioner, :
 :
 VS. :
 :
 MICHAEL FULLER, :
 :
 Respondent. :

CASE NO. 80,729

ANSWER BRIEF OF RESPONDENT ON THE MERITS

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	:	
Petitioner,	:	
VS.	:	CASE NO. 80,729
MICHAEL FULLER,	:	
Respondent.	:	
_____	:	

RESPONDENT'S ANSWER BRIEF ON THE MERITS

I STATEMENT OF THE CASE AND FACTS

Respondent accepts the state's statement of the case and facts as reasonably accurate.

II ARGUMENT

CERTIFIED QUESTION/ISSUE PRESENTED

DOES THE HOLDING IN EUTSEY V. STATE, 383 SO.2D 219 (FLA. 1980), THAT THE STATE HAS NO BURDEN OF PROOF AS TO WHETHER THE CONVICTIONS NECESSARY FOR HABITUAL FELONY OFFENDER SENTENCING HAVE BEEN PARDONED OR SET ASIDE, IN THAT THEY ARE "AFFIRMATIVE DEFENSES AVAILABLE TO [A DEFENDANT]," EUTSEY, 383 SO.2D AT 226, RELIEVE THE TRIAL COURT OF ITS STATUTORY OBLIGATION TO MAKE FINDINGS REGARDING THOSE FACTORS, IF THE DEFENDANT DOES NOT AFFIRMATIVELY RAISE, AS A DEFENSE, THAT THE QUALIFYING CONVICTIONS PROVIDED BY THE STATE HAVE BEEN PARDONED OR SET ASIDE?

Respondent, Michael Fuller, argues that the question certified by the district court should be answered in the negative, and the opinion on remand affirmed, Fuller v. State, 605 So.2d 1307 (Fla. 1st DCA 1992).

Respondent agrees with the observation made in the state's brief that the decision of this court in the pending cases of Anderson v. State, 592 So.2d 1119 (Fla. 1st DCA 1991), review pending no. 79.535, and Hodges v. State, 596 So.2d 481 (Fla. 1st DCA 1992), review pending, no. 79,728, will control the outcome of this case with respect to whether a trial court must find that the convictions relied upon as a predicate for an habitual felony offender sentence have not been pardoned or set aside (State's Brief, 6). See also Jones v. State, 606 So.2d 709 (17 FLW D2375) (Fla. 1st DCA 1992) (en banc), review pending 80,751. Respondent therefore adopts the arguments made by Anderson and Hodges as his own.

III CONCLUSION

Respondent respectfully requests that this court answer the certified question in the negative and affirm the district court decision below,

Respectfully submitted,
NANCY A. DANIELS
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been hand-delivered mailed to Richard Parker, Assistant Attorney General, Criminal Division, The Capitol, Tallahassee, Florida, this 5 day of January, 1993.



KATHLEEN STOVER