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FILED
SID J. WHITE
JAN 15 1993
CLERK, SUPREME COURT.
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CLARENCE BROOKS,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

CASE NO. 80,768

REPLY BRIEF OF PETITIONER ON THE MERITS

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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not the entire criminal code. Section 775.021(1), in contrast, applies to "[t]he provisions of this code and offenses defined by other statutes," i.e., sentencing and substantive offense provisions alike.

Respondent argues, at page 7 of the answer brief, that as Palmer and Daniels concern mandatory minimum sentences, they impose no limitation on the discretion granted by section 775.021(4)(a) to the trial court to impose consecutive sentences. However, that provision makes no distinction between mandatory minimum and overall sentences. Each sanction is a sentence, and thus each should presumably fall within the ambit of the provision. Yet clearly, the trial judge's sentencing discretion over mandatory minimum terms is circumscribed by the holdings in Palmer and Daniels. Section 775.021(4)(a) must therefore be susceptible of limits in this respect.

The state argues for an expedient construction of the word "case." It is a word with several possible meanings, among them a situation or set of circumstances and a lawsuit. The rule of lenity in section 775.021(1) requires that the word be construed as a lawsuit, the definition most favorable to the accused.

Finally, in a footnote at page 7 of the answer brief, respondent claims that the language in section 775.084, that the court "shall sentence the habitual offender as follows", does not support petitioner's argument. True enough, but meaningless. Nor does the language support respondent's argument. It has no impact on this issue whatsoever. The fact that the statute authorizes enhanced penalties for crimes committed by a person

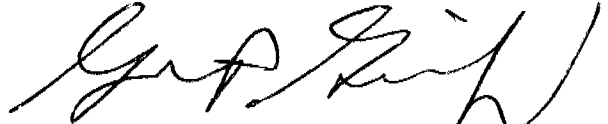
designated a "habitual offender" carries no ramifications for the total sanction authorized.

CONCLUSION

Based on the arguments contained herein and in the initial brief, petitioner requests that this Honorable Court vacate his sentences and remand with appropriate directions.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
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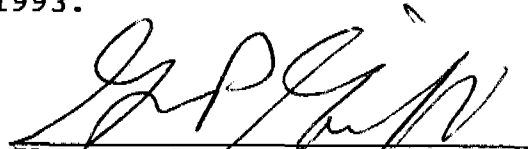


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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Laura Rush, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, FL, on this 15th day of January, 1993.



GLEN P. GIFFORD
ASSISTANT PUBLIC DEFENDER