

FILED

SID J. WHITE

MAR 11 1993

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

ERIC ENNIS RHOADS,
Petitioner,

v.

CASE NO. 80,851

STATE OF FLORIDA,
Respondent.

Discretionary Review of Decision of the
District Court of Appeal of Florida
Second District

ANSWER BRIEF OF RESPONDENT ON THE MERITS

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STATEMENT OF THE FACTS AND OF THE CASE

Respondent adopts Petitioner's Statement of the Case and of the Facts.

SUMMARY OF THE ARGUMENT

Petitioner's case should be remanded for resentencing on the authority of Johnson v. State, 18 Fla. L. Weekly 555 (Fla. January 14, 1993) with leave to the State to present evidence if available that Petitioner meets the criteria for habitualization pursuant to Section 775.084 Florida Statutes (Supp. 1987).

ARGUMENT

ISSUE I

PETITIONER'S CASE SHOULD BE
REMANDED FOR RESENTENCING ON THE
AUTHORITY OF JOHNSON V. STATE, 18
FLA. L. WEEKLY 555 (FLA. JANUARY
14, 1993) WITH TO THE STATE
TO PRESENT EVIDENCE PETITIONER
QUALIFIED AS A HABITUAL OFFENDER
PURSUANT TO SECTION 775.084 FLORIDA
STATUTES (SUPP. 1987).

The record shows that Petitioner was declared a habitual offender by the trial court upon State's submission of certified copies of Petitioner's Illinois conviction for involuntary manslaughter in 1985. Petitioner was sentenced to four years prison and was released in 1987 within the five years prior to sentencing on his current case, thereby establishing a basis for the trial court to determine that he met the criteria for determination he was a habitual offender. Since State v. Johnson held that Chapter 89-280 Laws of Florida at 1632-33 which amended Section 775.084 Florida Statutes (Supp. 1987) violated the single subject rule and did not become valid until reenacted May 2, 1991, Petitioner's case should be remanded for resentencing.

Petitioner's scoresheet suggests that the State may have an additional basis to support a determination that Petitioner is a habitual offender and that he may meet the criteria established in Section 775.084 Florida Statutes (Supp. 1987), the statute as it existed prior to the provisions of Chapter 89-280 held invalid by this Court in Johnson for the "window period" between the original 1989 enactment of the revised law and its 1991 reenactment.


Respondent respectfully requests this Honorable Court to remand for resentencing with leave to the State to present evidence if available that Petitioner meets the criteria for habitualization pursuant to Section 775.084 Florida Statutes (Supp. 1987).

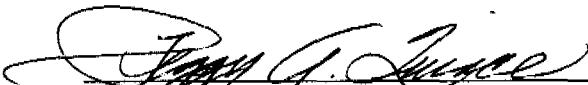
CONCLUSION

Based upon the foregoing facts, arguments and authorities,
Petitioner's case should be remanded for resentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the
foregoing has been furnished by U.S. mail to Stephen Krosschell,
Assistant Public Defender, P. O. Box 9000 Drawer PD, Bartow,
Florida 33830, on this 9th day of March, 1993.


OF COUNSEL FOR RESPONDENT