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FILED
SID J. WHITE
DEC 3 1992
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

ERIC ENNIS RHOADS, :

Petitioner, :

vs. : Case No. 80,851

STATE OF FLORIDA, :

Respondent. :

_____ :

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

STEPHEN KROSSCHELL
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER 351199

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33830
(813) 534-4200

ATTORNEYS FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

On January 2, 1991, the Hillsborough County state attorney charged the appellant, ERIC ENNIS RHOADS, with battery on a law enforcement officer, obstructing an officer without violence, five traffic-related misdemeanors, and a violation of a city ordinance against possessing open containers. (R49-52) On March 4, 1991, he pleaded guilty as charged. (R42) On April 5, 1991, a written notice of habitualization was filed. (R57) On April 16, 1991, Judge Mitcham found that Rhoads was an habitual offender and sentenced him to five years in prison for the battery and time served for the remaining charges. (R38) On September 26, 1991, Judge Allen granted Rhoads's motion for post-conviction relief for a belated appeal. (R74)

On appeal, the Second District Court of Appeal rejected the argument that the law authorizing the use of out-of-state convictions to habitualize the Petitioner violated the single subject rule. Rhoads v. State, case no. 91-03570 (Fla. 2d DCA Nov. 25, 1992). Petitioner now asks this Court to accept jurisdiction in his case.

SUMMARY OF THE ARGUMENT

This Court may take jurisdiction because the instant decision relies on another decision currently pending review in this Court.

ARGUMENT

ISSUE I

THE LAW AUTHORIZING THE USE OF OUT-OF-STATE CONVICTIONS VIOLATED THE SINGLE SUBJECT RULE.

In this case, the State used an out-of-state conviction as a predicate for habitual offender status. (R9) The law which allowed use of out-of-state convictions for habitual offender sentencing, however, violated the single subject rule. Johnson v. State, 589 So. 2d 1370 (Fla. 1st DCA 1991). Appellant committed his offense on December 12, 1990, (R49-52) before the law was reenacted and became official. See Tims v. State, 592 So. 2d 741 (Fla. 1st DCA 1992). Accordingly, the habitual offender sentence in this case was illegal.

The second district rejected this argument, relying on its decision in State v. Sheppard, 17 Fla. L. Weekly D1960 (Fla. 2d DCA Aug. 21, 1992). Sheppard is currently pending review in this Court (case number 80,418). Accordingly, this Court may and should take jurisdiction. Jollie v. State, 405 So.2d 418 (Fla. 1981).

CONCLUSION

Appellant asks this Court to take jurisdiction.

APPENDIX

PAGE NO.

1. Decision of Second District Court of Appeal in Rhoads v. State, case no. 91-03570 (Fla. 2d DCA Nov. 25, 1992) A1

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

ERIC ENNIS RHOADS

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 91-03570

Opinion filed November 25, 1992.

Appeal from the Circuit
Court for Hillsborough County;
Bob Anderson Mitcham, Judge.

James Marion Moorman,
Public Defender, and
Stephen Krosschell,
Assistant Public Defender,
Bartow, for Appellant.

Robert A. Butterworth,
Attorney General, Tallahassee,
and Ann P. Corcoran,
Assistant Attorney General,
Tampa, for Appellee.

PER CURIAM.

Affirmed. See State v. Sheppard, 17 F.L.W. D1960 (Fla. 2d DCA Aug. 21, 1992).

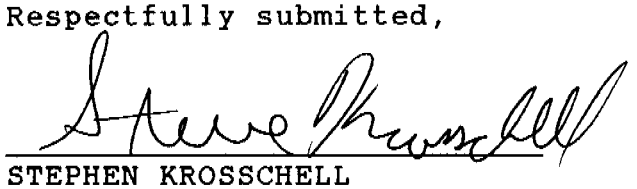
RYDER, A.C.J., HALL and BLUE, JJ., Concur.

A1

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Ann P. Corcoran, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 1st day of December, 1992.

Respectfully submitted,



JAMES MARION MOORMAN
Public Defender
Tenth Judicial Circuit
(813) 534-4200

STEPHEN KROSSCHELL
Assistant Public Defender
Florida Bar Number 351199
P. O. Box 9000 - Drawer PD
Bartow, FL 33830

SK/mlm