

**FILED**

SID J. WHITE

APR 8 1993

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE FLORIDA SUPREME COURT

MARVIN TUCKER,

Petitioner,

v.

Case No. 80,870

STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW TO THE  
DISTRICT COURT OF APPEAL, SECOND DISTRICT

BRIEF OF RESPONDENT ON THE MERITS

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/srr

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ARGUMENT  
ISSUE

WHETHER THE CIRCUIT COURT ERRED IN FINDING  
PETITIONER TO BE A HABITUAL FELONY OFFENDER  
WITHOUT FINDING THAT THE PRIOR CONVICTIONS  
HAD NOT BEEN PARDONED OR SET ASIDE  
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SUMMARY OF THE ARGUMENT

Petitioner concedes that this case is controlled by Rucker and that he can not demonstrate error. Respondent concurs.

ARGUMENT

ISSUE

WHETHER THE CIRCUIT COURT ERRED IN FINDING  
PETITIONER TO BE A HABITUAL FELONY OFFENDER  
WITHOUT FINDING THAT THE PRIOR CONVICTIONS  
HAD NOT BEEN PARDONED OR SET ASIDE  
ON POST-CONVICTION RELIEF?

(As restated by respondent)


Petitioner concedes that the issue in this case has been  
authoritatively resolved against him in State v. Rucker, 18 Fla.  
L. Weekly S93 (Fla. Feb 4, 1993). Respondent also sees Rucker as  
controlling. This court should affirm.

CONCLUSION

WHEREFORE Respondent asks the court affirm the decision of the district court for the above and foregoing reasons, arguments, and authorities.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Brief of Respondent on Jurisdiction has been furnished to, Deborah K. Brueckheimer, Assistant Public Defender, Public Defenders Office, Polk County Courthouse, P.O. Drawer 9000--Drawer PD, Bartow, Florida 33830, Attorney for Petitioner, by United States Mail, postage prepaid, this 6<sup>th</sup> day of April, 1993.

  
OF COUNSEL FOR RESPONDENT