

FILED

SID J. WHITE

FEB 18 1993

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Appellant,

vs.

Case No. 81,034

JOEY WASHINGTON,
Appellee.

PETITIONER'S REPLY BRIEF ON MERITS

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TABLE OF CONTENTS

PAGE NO.

TABLE OF CONTENTS.....i
TABLE OF CITATIONS.....ii
SUMMARY OF THE ARGUMENT.....1
ARGUMENT
ISSUE
WHETHER THE TRIAL COURT ERRED BY NOT
MAKING A SPECIAL FINDING THAT THE
CONVICTIONS NECESSARY TO IMPOSE A
HABITUAL SENTENCE HAD NOT BEEN PARDONED
OR SET ASIDE.....1

CONCLUSION.....1
CERTIFICATE OF SERVICE.....2

TABLE OF CITATIONS

CASES

PAGE NO.

Rucker v. State,
18 Fla. L. Weekly S93 (Fla. Feb. 4, 1993).....1

CONSTITUTIONS AND STATUTES

Florida Statutes

Section 775.084.....1

SUMMARY OF ARGUMENT

The summary is omitted due to brevity of argument.

ARGUMENT

ISSUE

WHETHER THE TRIAL COURT ERRED BY NOT MAKING
A SPECIAL FINDING THAT THE CONVICTIONS
NECESSARY TO IMPOSE A HABITUAL SENTENCE HAD
NOT BEEN PARDONED OR SET ASIDE

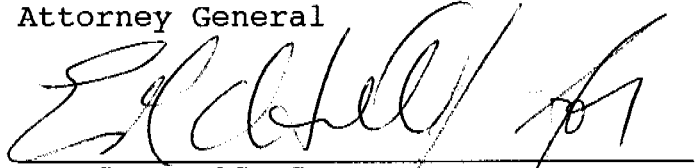
In Rucker v. State, 18 Fla. L. Weekly S93 (Fla. Feb. 4, 1993), this Court held that the trial court was required to make a finding that the prior convictions had not been pardoned or set aside; pursuant to section 775.084(1)(a)(3), (4), Florida Statutes, but that the failure to make these findings was subject to a harmless error analysis. Washington does not now contend that this prior convictions have been pardoned or set aside. Since Washington has two prior felonies within the requisite period of time as proved by the State (R 158), the trial court's failure to make a finding that these convictions had not been pardoned or set aside was harmless beyond a reasonable doubt. *Id.* at 94.

CONCLUSION


Basedon the foregoing argument, this Court should reverse the decision of the First District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Reply Brief on the Merits has been furnished by U.S. Mail to MR. P. DOUGLAS BRINKMEYER, Assistant Public Defender, Office of the Public Defender, Second Judicial Circuit of Florida, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 18th day of February, 1993.



JOE S. GARWOOD