IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 81,067

AL BRONCO JACKSON,

Respondent.

_____/

RESPONDENT'S BRIEF ON THE MERITS

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

P. DOUGLAS BRINKMEYER
FLORIDA BAR #197890
ASSISTANT PUBLIC DEFENDER
CHIEF, APPELLATE DIVISION
LEON COUNTY COURTHOUSE
SUITE 401
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
(904) 488-2458

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	:	
Petitioner,	:	
VS.	:	CASE NO. 81,067
AL BRONCO JACKSON,	:	
Respondent.	:	
	:	

RESPONDENT'S BRIEF ON THE MERITS

I STATEMENT OF THE CASE AND FACTS

Respondent accepts the state's statement of the case and facts as reasonably accurate. Attached hereto as an appendix is the opinion of the lower tribunal.

II SUMMARY OF THE ARGUMENT

This Court has before it three pending cases which will answer the instant certified question. The lower tribunal was correct in holding that the judge's findings here were woefully insufficient. The certified question must be answered in the negative and the decision approved.

Respondent does not agree that a recent decision of this Court is dispositive of the issue. That case answered the certified question in the negative, i.e., that Eutsey does not relieve the sentencing judge of his statutory duty to make findings. That case further held the error was harmless, which cannot be true in the instant case, because the only findings made by the sentencing judge in the instant case were that respondent qualified as an habitual offender, without saying how or why, or addressing any of the statutory criteria.

III ARGUMENT

CERTIFIED QUESTION/ISSUE PRESENTED

DOES THE HOLDING IN EUTSEY v. STATE, 383 So. 2d 219 (Fla. 1980), THAT THE STATE HAS NO BURDEN OF PROOF AS TO WHETHER THE CONVICTIONS NECESSARY FOR HABITUAL FELONY OFFENDER SENTENCING HAVE BEEN PARDONED OR SET ASIDE, IN THAT THEY ARE "AFFIRMATIVE DEFENSES AVAILABLE TO [A DEFENDANT]," EUTSEY, 383 So. 2d AT 226, RELIEVE THE TRIAL COURT OF ITS STATUTORY OBLIGATION TO MAKE FINDINGS REGARDING THOSE FACTORS, IF THE DEFENDANT DOES NOT AFFIRMATIVELY RAISE, AS A DEFENSE, THAT THE QUALIFYING CONVICTIONS PROVIDED BY THE STATE HAVE BEEN PARDONED OR SET ASIDE?

Respondent argues that the question certified by the district court should be answered in the negative, and the opinion affirmed.

Respondent agrees with the observation made in the state's brief that the decision of this Court in the pending cases of Anderson v. State, 592 So. 2d 1119 (Fla. 1st DCA 1991), review pending no. 79.535, and Hodges v. State, 596 So. 2d 481 (Fla. 1st DCA 1992), review pending, no. 79,728, Jones v. State, 606 So. 2d 709 (Fla. 1st DCA 1992) (en banc), review pending, case no. 80,751, will control the outcome of this case with respect to whether a trial court must find that the convictions relied upon as a predicate for an habitual felony offender sentence have not been pardoned or set aside. Respondent therefore adopts the arguments made by Anderson, Hodges, and Jones as his own.

Respondent does not agree with the observation made in the state's brief that the decision of this Court in State v. Rucker, 18 Fla. L. Weekly S93 (Fla. Feb. 4, 1993), is dispositive of the issue. Rucker answered the certified question in the negative, i.e., that Eutsey does not relieve the sentencing judge of his statutory duty to make findings. Rucker further held the error in his case was harmless because:

> [T]he trial court expressly found that Rucker met the definition of [an] habitual felony offender by a preponderance of the evidence.

Rucker, 18 Fla. L. Weekly at S94.

It is important to note that the only findings made by the sentencing judge in the instant case were that respondent qualified as an habitual offender (R 204), without saying how or why, or addressing any of the statutory criteria. These historical findings are woefully inadequate, and do not satisfy the requirements of Section 775.084, Florida Statutes, and this Court's prior opinion in Walker v. State, 462 So. 2d 452 (Fla. 1985), even under the harmless error standard expressed by this Court in Rucker.

IV CONCLUSION

Respondent respectfully requests that this Court answer the certified question in the negative and affirm the district court decision.

Respectfully submitted,
NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

P. DOUGLAS BRINKMEYER
Fla. Bar No. 0197890
Assistant Public Defender
Chief, Appellate Division
Leon County Courthouse
301 S. Monroe - Suite 401
Tallahassee, Florida 32301
(904) 488-2458

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Carolyn Mosley, Assistant Attorney General, by delivery to Plaza Level, The Capitol, Tallahassee, Florida, and a copy has been mailed to respondent, this 17th day of February, 1993.

P. DOUGLAS BRINKMEYER

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

AL BRONCO JACKSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

CASE NO. 92-196

Opinion filed December 16, 1992.

An appeal from the Circuit Court for Okaloosa County.
G. Robert Barron, Judge.

P. Douglas Brinkmeyer, Assistant Public Defender, Tallahassee, for appellant.

James W. Rogers, Senior Assistant Attorney General, Tallahassee, for appellee.

PER CURIAM.

Appellant's sentence is reversed in accordance with this court's opinion in Jones v. State, 17 F.L.W. D2375 (Fla. 1st DCA Oct. 14, 1992) (en banc). We certify to the Florida Supreme Court as a question of great public importance the same question certified in Jones.

JOANOS, C.J., SMITH and MINER, JJ., CONCUR.