

FILED

SID J. WHITE

FEB 24 1993

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

STATE OF FLORIDA, :
 :
 Petitioner, :
 :
 v. :
 :
 TONY STONE, :
 :
 Respondent. :
 _____ :

CASE NO. 81,083

RESPONDENT'S MERIT BRIEF

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

✓ ABEL GOMEZ
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR #0832545
LEON COUNTY COURTHOUSE
FOURTH FLOOR NORTH
TALLAHASSEE, FLORIDA 32301
(904) 488-2458

ATTORNEY FOR RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Respondent agrees with the statement of the case and facts set out in petitioner's merit brief.

SUMMARY OF ARGUMENT

This Court should affirm the district court's decision since the trial court error was harmful.

ARGUMENT

THE TRIAL COURT'S HABITUAL OFFENDER FINDINGS WERE INADEQUATE, THIS ERROR WAS HARMFUL SINCE THE TRIAL COURT FAILED COMPLETELY TO ADDRESS ANY OF THE STATUTORY CRITERIA.

Respondent does not agree with petitioner's argument that State v. Rucker, 18 Fla. L. Weekly S93 (Fla. Feb. 4, 1993) is dispositive. Rucker answered the question certified in Anderson v. State, 592 So. 2d 1119 (Fla. 1st DCA 1991)(question certified on rehearing)(1992), in the negative. Thus this court held Eutsey v. State, 383 So. 2d 219 (Fla. 1980), does not relieve the sentencing judge of his statutory duty to make findings. Rucker further held the error there was harmless because:

the trial court expressly found that Rucker met the definition of habitual felony offender by a preponderance of the evidence.

18 Fla. L. Weekly at S94.

Here the trial court only made the following findings:

The Court finds that he does qualify as an habitual felony offender in accordance with the evidence that has been submitted, and I will, therefore, classify him for sentencing purposes as an habitual felony offender.

R.75. The trial court failed to state how or why petitioner qualified as a habitual offender. It failed to address any of the statutory criteria. These findings were thus woefully inadequate and do not satisfy the requirements of Section 775.084, Florida Statutes or Walker v. State, 462 So. 2d 452 (Fla. 1985). For these reasons the state has failed to show

the trial court's error was harmless beyond a reasonable doubt,
even as this standard is discussed in Rucker.

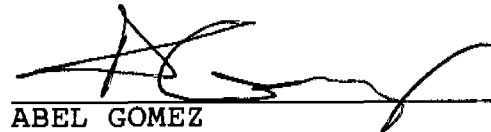
CONCLUSION

Based on the foregoing argument, this court should affirm the district court's decision.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished to Assistant Attorney General Carolyn J. Mosley by delivery to The Capitol, Plaza Level, Tallahassee, Florida, on 24 February 1993.

Respectfully submitted,



ABEL GOMEZ
ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR RESPONDENT
FLORIDA BAR # 832545

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT
LEON COUNTY COURTHOUSE
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
(904) 488-2458