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APR 26 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner/)
 Cross-Respondent,)
)
 v.)
)
 VINNEY TRIPP,)
)
 Respondent/)
 Cross-Petitioner.)
 _____)

CASE NO. 81,119

REPLY BRIEF OF CROSS-PETITIONER

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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ARGUMENT

THE STATE HAS WAIVED ARGUMENT ON ISSUES
II-VIII.

Evidently, the state remains piqued over the Court's acceptance of Mr. Tripp's combined initial and answer briefs.

To set the record straight, the state created the vehicle for the Court's consideration of these meritorious issues when it invoked the Court's jurisdiction, illustrating the principle that actions have sometimes undesirable consequences. The state portrays Mr. Tripp's actions in raising these issues -- which he plainly may do -- as "abominable, given the rules of appellate procedure and limited financial resources of the Court and both parties." First, nothing in the appellate rules bars the issues raised by Mr. Tripp. Second, Mr. Tripp will not ask to be excused for placing his interest in freedom above the temporal and financial exigencies of the court system. Lest it be forgotten, he is serving a life sentence for his first adult offense, one allegedly perpetrated at age 18, and one which he staunchly denies having committed. Mr. Tripp does not have the

perspective of a bureaucrat; as a young man looking at life in prison, he cannot be expected to care deeply whether the trains run on time.

Had the state read Mr. Tripp's brief, it would not have claimed that he "has done nothing more than to copy the arguments he made to the First District." In fact, Mr. Tripp revised those arguments in light of the most recent case law and the arguments made below by the state. The state evidently was not up to a comparable effort, for it merely attached its answer brief and supplemental authority from the proceedings in the First District. It now relies on this Court to winnow out the obsolete material. The appendix containing this material is in obvious violation of Florida Rule of Appellate Procedure 9.220. Nonetheless, Mr. Tripp is content to let it stand. Since he has already addressed the arguments and case law contained in this material, he has little need of further reply.

On the merits, this Court's decision in State v. Varner, 18 Fla. L. Weekly S241 (April 15, 1993), invalidates one of the reasons cited by the trial court for departure. See Point VIII of the initial brief.

CONCLUSION

Based on the arguments contained herein and in the initial brief, cross-petitioner requests that this Honorable Court reverse his convictions, or, in the alternative, vacate his sentences, and remand with appropriate directions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to James W. Rogers and Gypsy Bailey, Assistant Attorneys General, by delivery to The Capitol, Plaza Level, Tallahassee, FL, on this 26th day of April, 1993.



GLEN P. GIFFORD
ASSISTANT PUBLIC DEFENDER