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CLERK, SUPREME COURT

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SUPREME COURT OF FLORIDA

ANTHONY LLOYD STEEL,
Petitioner,

v.

Case No. 81,437
DCA #92-411
Marion County #90-2678-CF-A-Y

STATE OF FLORIDA,
Respondent.

_____ /

ON APPEAL FROM THE DISTRICT COURT OF APPEAL,
FIFTH DISTRICT, TO THE SUPREME COURT OF FLORIDA

ANSWER BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

The Petitioner was sentenced as a habitual felony offender...
(Respondent's Answer Brief, page 1, and Appendix XII and XV).

SUMMARY OF ARGUMENT

The invalid provisions of the 1989 Habitual Offender Statute renders the Petitioner's sentence as to a Habitual Offender illegal, requiring remand for resentencing without application of the Habitual Offender statute.

ARGUMENT

THE PETITIONER WAS NOT SENTENCED
AS A VIOLENT HABITUAL OFFENDER

Petitioner was sentenced to nine years incarceration which is below the minimum required for those found to be Violent Habitual Offenders pursuant to F. S. 775.084. The sentence expressly provides the Petitioner is sentenced as a Habitual Offender with no suggestion he was sentenced as a Violent Habitual Offender (Appendix XII, XV).

Upon remand, it would be illegal to now impose a Violent Habitual Offender sentence, even if sufficient facts could be established; where as here, the trial court's original Habitual Offender sentence was reversed by the appellate court; TAYLOR v. STATE, 576 So.2d 968 (5th DCA 1991) and NORTH CAROLINA v. PEARCE, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969). Likewise it would be illegal to depart from the guidelines under the authority of STATE v. BETANCOURT, 552 So.2d 1107 (Fla. 1989) because the trial court initially realized and considered it was departing from the guidelines.

CONCLUSION

Petitioner respectfully requests that this Honorable Court vacate and set aside the sentence and remand the matter to the trial court with directions to impose a guideline sentence.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Barbara Arlene Fink, Assistant Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, FL 32114, counsel for respondent, by mail, this 20th day of August, 1993.


RONALD E. FOX