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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

MICHAEL EDENFIELD, :
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 Petitioner, :
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 vs. :
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

Case No. 81,889

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

KAREN K. PURDY
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FLORIDA BAR NUMBER 856932

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ATTORNEYS FOR PETITIONER

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STATEMENT OF THE CASE

On October 30, 1991, the Appellant, MICHAEL EDENFIELD, pled guilty in Hillsborough County Circuit Court to violation of probation in two cases, 90-11055 and 90-14078. He was sentenced to a total of twenty years in prison as a habitual offender, ten years consecutive for each case.

In Circuit Court number 90-11055, Mr. Edenfield was charged with carrying a concealed firearm occurring July 16, 1990, in violation of section 790.01(2), Florida Statutes (1989). On August 2, 1990, the trial judge signed a "Subsequent Felony Notice." On the same day, Mr. Edenfield pled no contest to the charge and was placed on two years probation as a subsequent felony offender. On October 4, 1990, the probation was revoked; and Mr. Edenfield was placed on three years probation. On October 30, 1991, Mr. Edenfield's probation was again revoked and he was sentenced to ten years prison as a habitual offender, with credit for 53 days time served.

In Circuit Court number 90-14078, Mr. Edenfield was charged with grand theft of a motor vehicle occurring August 6, 1990, in violation of section 812.014(2)(c)(4), Florida Statutes (1989). On October 3, 1990, the trial judge signed a "Subsequent Felony Notice." One day later, on October 4, 1990, Mr. Edenfield pled guilty as charged and was sentenced to two and a half years prison (non-habitual), followed by three years probation. He was sentenced as a subsequent felony offender on the probation portion of the sentence only. On October 30, 1991, Mr. Edenfield was

resentenced for a probation violation to ten years prison as a habitual offender, consecutive to 90-11055, with credit for 196 days time served.

A Notice of Appeal was timely filed on November 6, 1991, contesting the sentences imposed on October 30, 1991. One of the issues raised in Mr. Edenfield's brief on appeal was that the trial court erred in not awarding credit for the two and a half years served previously in Circuit Court number 90-14078.

The Second District Court of Appeal issued an opinion in this case on May 19, 1993. The court rejected the argument that Mr. Edenfield should have been given credit for the prior prison time served and cited its recent opinion in Bradley v. State, 18 Fla. L. Weekly D1016 (Fla. 2d DCA April 14, 1993).

SUMMARY OF THE ARGUMENT

In affirming Mr. Edenfield's sentences, the court upheld the denial of credit for two and a half years served previously in prison. The court relied on Bradley v. State, 18 Fla. L. Weekly D1016 (Fla. 2d DCA April 14, 1993), in upholding the denial of credit. The Bradley decision specifically certified conflict with a Fourth District Court of Appeal case. As Mr. Edenfield's case was decided on the basis of Bradley, this court should accept jurisdiction over Mr. Edenfield's case pending resolution of the conflict certified in Bradley.

ARGUMENT

ISSUE

WHETHER THERE EXISTS A DIRECT CONFLICT OF DECISIONS AS TO THE EFFECTIVE DATE OF SECTION 948.06(6), FLORIDA STATUTES.

The issue of whether the trial court had authority to deny Mr. Edenfield's credit for two and a half years served rests on determining the effective date of Section 948.06(6), Florida Statutes.

In Chapter 89-526, Section 8, Laws of Florida, and in Chapter 89-531, Section 13, Laws of Florida the legislature enacted substantially similar measures relating to forfeiture of gain time. These laws were enacted on the same day, June 28, 1989. Chapter 89-531, which originated in Senate Bill No. 12-B, states in section 19, "[t]his act shall apply to offenses committed on or after October 1, 1989." Chapter 89-526, which originated in House Bill No. 9-A, states in section 52, "[s]ections 1 through 9 of this act shall take effect September 1, 1990."

Both measures purport to add a new subsection (6) to section 948.06, Florida Statutes. The first line of Chapter 89-526, Section 8, and Chapter 89-531, Section 13, is the same: "Subsection (6) is added to section 948.06, Florida Statutes..."

The District Courts have divided over the effective date of the new subsection (6). The Fifth and Fourth District Courts of Appeal have stated that section 948.06(6) became effective September 1, 1990. See Smith v. State, 18 Fla. L. Weekly D471

(Fla. 5th DCA Feb. 12, 1993) ("Green applies, notwithstanding section 948.06(6), Florida Statutes, (Chapter 89-526, Section 8, Laws of Florida, effective September 1, 1990), because the original underlying offense occurred on February 6, 1989, prior to the effective date of the statutory change on September 1, 1990"); Ferguson v. State, 594 So.2d 864, 866 n.6 (Fla. 5th DCA 1992) ("Neither party addresses the applicability of section 948.06(6)... This section was effective September 1, 1990. Laws 1989, Chapter 89-526, Section 8, 11, 52"); Thomas v. State, 605 So.2d 1286 (Fla. 4th DCA 1992) ("Green applies because appellant committed the original offense before September 1, 1990, the effective date of section 948.06(6).")

The Second District Court of Appeal's decision in Bradley v. State, 18 Fla. L. Weekly D1016 (Fla. 2d DCA April 14, 1993) holds that the effective date of §948.06(6) is October 1, 1989. "Effective October 1, 1989, the authority to forfeit gain time when probation or community control was revoked was extended to the trial court. §948.06(6), Fla. Stat. (1989)." Id.

In Bradley, the court certified conflict with Thomas. The Second District Court decided Mr. Edenfield's case based on Bradley and the October 1, 1989, effective date of the statute. Mr. Edenfield's offense was committed August 6, 1990. Inasmuch as Mr. Edenfield will be affected by this court's resolution of the Bradley/Thomas conflict, he asks this Court to accept jurisdiction over his case.

CONCLUSION

Based on the foregoing argument and authorities, this Court should accept jurisdiction over this case.

APPENDIX

PAGE NO.

1. Opinion filed in the Second
District Court of Appeal
November 6, 1992.

A1

aff'd

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

MICHAEL EDENFIELD,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Case No. 91-03720

Opinion filed May 19, 1993.

Appeal from the Circuit Court
for Hillsborough County;
Harry Lee Coe, III, Judge.

James Marion Moorman, Public
Defender, and Karen K. Purdy,
Assistant Public Defender,
Bartow, for Appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, and Peggy
A. Quince, Assistant Attorney
General, Tampa, for Appellee.

PER CURIAM.

Affirmed. Bradley v. State, 18 Fla. L. Weekly D1016

(Fla. 2d DCA Apr. 14, 1993).

THREADGILL, A.C.J., and ALTENBERND, J., and STOUTAMIRE, R.
GRABLE, Associate Judge, Concur.


Received
MAY 19 1993
Appellate Division
Public Defenders Office

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Peggy Quince,
Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on
this 4th day of June, 1993.

Respectfully submitted,

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