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FEB 24 1994

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

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

Case No. 81,889

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

REPLY BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

KAREN KINNEY
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER 856932

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ATTORNEYS FOR PETITIONER

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ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN
SENTENCING MR. EDENFIELD AS A HABIT-
UAL OFFENDER.

Since the filing of the petitioner's initial brief, Mr. Edenfield's claim raised in this issue has been remedied by the trial court; therefore, Mr. Edenfield is no longer pursuing this issue. On September 17, 1993, Mr. Edenfield filed a pro se motion to correct his sentence pursuant to Florida Rule of Criminal Procedure 3.800(a) (A-1). On January 25, 1994, the trial court granted Mr. Edenfield's motion and resentenced him for the charges in this case to a non-habitual sentence of five years (B-1). The state did not file notice of its intent to appeal the new sentence. Mr. Edenfield has been granted the relief sought in his appeal on this issue; therefore, the issue is moot.

ISSUE II

WHETHER THE TRIAL COURT ERRED IN
DENYING MR. EDENFIELD CREDIT FOR 2
AND 1/2 YEARS TIME SERVED.

Mr. Edenfield relies on the arguments made in his initial brief for this point.

APPENDIX

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IN THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY
FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

MICHAEL EDENFIELD,
Defendant.

CASE NOS. 90-11055 & 90-14078

Received By

FEB 14 1994

Appellate Division
Public Defenders Office

MOTION TO CORRECT SENTENCE
PURSUANT TO RULE 3.800 (a), FLORIDA RULES OF CRIMINAL PROCEDURE

COMES NOW, the Defendant, Michael Edenfield, in proper person pursuant to Rule 3.800 (a), FRCr.P, and files this Motion To Correct Two Sentences, imposed by the HONORABLE HARRY LEE COE, III, Circuit Court Judge, Thirteenth Judicial Circuit on October 30, 1991.

JURISDICTION

Pursuant to Rule 3.800 (a) Florida Rules Of Criminal Procedure, A Court may correct an illegal sentence imposed by it or an innocent calculation made by it in a sentencing guideline scoresheet.

STATEMENT OF THE CASE

On October 30, 1991, Defendant Edenfield, entered a plea of guilty in Hillsborough County Circuit Court to violation of probation in two cases, 90-11055 & 90-14078. Defendant was sentenced to a total of Twenty Years in Prison as a habitual offender on Two consecutive ten year sentences imposed for each case.

Copies to law clerk
12-9-93

1.

Copies Sent
10-1-93

In Case No. 90-11055, Defendant Edenfield, was charged with carrying a concealed firearm, in violation of section 790.01(2), Florida Statute (1989). On August 2, 1990, the trial court judge signed a "Subsequent Felony Notice", and on the same day the court accepted a plea of no contest from the defendant and placed him on two years probation as a subsequent felony offender.

On October 4, 1990, the probation was revoked, due to the Defendant being charged with violation of § 812.014 (2)(c)(4), F.S., GRAND THEFT, 3rd. degree. Defendant Edenfield was sentenced to two and one half years in the Department of Corrections followed by three years probation on the grand theft charge, to be followed by three years probation on the concealed firearms charge, the probation portions of the two sentences to run consecutive to one another to run consecutive to the D.O.C. prison sentence.

After completing the Two and One Half Year Prison Sentence, Defendant Edenfield violated the probation portion of the split sentence and the probation for the concealed weapon sentence.

On October 30, 1991, Defendant Edenfield, in violation of both probated sentences was sentenced to ten years in the custody of the Department of Corrections on each probation violation to be served consecutive to one another as a habitual felony offender for a total of twenty years in prison. The two sentences are illegal.

ARGUMENT POINT ONE, CASE NO. 90-14078

In case 90-14078, Defendant Edenfield, was illegally sentenced on the Grand Theft Charge when Judge Coe, sentenced Edenfield to two and one half years in the Department of Corrections followed by three years probation. This sentence exceeded the maximum penalty prescribed by law on a third degree felony by six months and therefore was illegal.

Judge Coe compounded the illegal sentence by adjudicating the Defendant as a habitual felony offender without first notifying the defendant of the courts intention to do so prior to accepting the plea of guilty and explaining to the defendant the consequences of a plea of guilty as a habitual felony offender ASHLEY V. STATE, 614 So.2d 486, which held that:

"In order for defendant to be habitualized following guilty plea or nolo plea, prior to acceptance of the plea, defendant must be given written notice of intent to habitualize, and the court must confirm that defendant is personally aware of possibility and reasonable consequences of habitualization.

Before the court could legally accept a guilty or nolo plea, the court must determine on record that the defendant qualifies as a habitual felony offender by first presenting documented proof of prior convictions pursuant to § 775.084 F.S. and the defendant is made aware of the maximum possible sentence provided by law that may be imposed for the crime, ASHLEY, id. .

In support of the above argument, the Florida Supreme Court has held in SNEAD V. STATE, 616 So.2d 964, that;

"trial court could not, upon revocation of probation, sentence a defendant as a habitual felony offender if the trial court failed to seek enhanced penalty or file intent to habitualize before original plea hearing.

The courts have held that "Hybred sentences of prison without habitual felony offender status, followed by probation with habitual felony offender status", for defendant who was adjudged to

be habitual felon , violated the habitual felony offender statute; either both ends of split sentences had to be as habitual felony offender or neither, BURRELL V. STATE, 610 So.2d 594 (1992).

ARGUMENT POINT TWO

CASE NO. 90-11055

Defendant Edenfield was sentenced to two years probation in CASE NO. 90-11055, carrying a concealed weapon in violation of section 790.01(2), Florida Statute. Sentence was passed August 2, 1990, and on the same date Judge Coe, earlier, had signed a "Subsequent Felony Notice". This type of notice did not qualify the Defendant as a habitual felony offender when the probation was revoked October 30, 1991, and the defendant was sentenced as a habitual felony offender pursuant to § 775.084, Florida Statute.

So as not to be repetitive Defendant adopts the case law and arguments presented in CASE NO. 90-14078, in point one of this motion and incorporates it in point two of Case No. 90-11055.

CONCLUSION

Defendant Edenfield was not properly habitualized as a habitual felony offender. The trial court's signing of a "Subsequent Felony Notice" does not meet the requirements of § 775.084, F.S., STEINER V. STATE, 951 So.2d 1070 (1991), and the record does not reflect that the trial court judge complied with any of the provisions set forth in § 775.084 , as held by the Florida Supreme Court in ASHLEY V. STATE, 614 So.2d 486. For the above stated reasons set forth in this motion to correct sentence, Defendant Edenfield respectfully request that the sentence be vacated and set

aside and the defendant be returned to court to be sentenced within the sentencing guidelines.

Respectfully Submitted

Michael A Edenfield

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CERTIFICATE OF SERVICE

I, HEREBY CERTIFY, that a true and correct copy of the foregoing was delivered by U.S. Mail to the Office of The State Attorney, Courthouse Annex, Tampa, Florida, 33602, this 17th day of September, 1993.

Michael A Edenfield

MICHAEL EDENFIELD

MOTION HEARD, CONSIDERED AND
Granted EXCEPTION
NOTED THIS 2/10 19 94
Dale J. [Signature]
JUDGE

Dunc to Tunc to 1/25/94