

047

FILED

SID J. WHITE

✓ DEC 7 1993

1/3

IN THE SUPREME COURT OF FLORIDA

CASE NO. 81,896

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

MICHAEL BEDFORD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appellee's Brief on the Merits

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

James J. Carney
Florida Bar no. 475246
Assistant Attorney General
111 Georgia Ave.
Suite 204
West Palm Beach, FL 33401

Counsel for Appellee

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
<u>ISSUE I</u>	4
WHETHER THE TRIAL COURT ERRED IN SENTENCING APPELLANT?	
CONCLUSION	6
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

CASES

<u>Alvarez v. State</u> , 358 So. 2d 10 (Fla. 1978)	. . . . .	5
<u>Applegate v. Barnett Bank of Tallahassee</u> , 377 So. 2d 1150 (Fla. 1979)	. . . . .	4
<u>Bedford v. State</u> , 589 So. 2d 245 (Fla. 1991)	. . . . .	2, 4
<u>Bedford v. State</u> , 617 So. 2d 1134 (Fla. 4th DCA 1993)	. . . . .	2
<u>Gates v. State</u> , 535 So. 2d 359 (Fla. 4th DCA 1989)	. . . . .	4
<u>Gibbs v. Wainwright</u> , 303 So. 2d 7 (Fla. 1974)	. . . . .	4
<u>Powloski v. State</u> , 467 So. 2d 334 (Fla. 5th DCA 1985)	. . . . .	5
<u>Salas v. State</u> , 589 So. 2d 343 (Fla. 4th DCA 1991)	. . . . .	5
<u>Taylor v. State</u> , 481 So. 2d 97 (Fla. 3d DCA 1986)	. . . . .	5
<u>Wilson v. State</u> , 622 So. 2d 529 (Fla. 2d DCA 1993)	. . . . .	5
<u>Wright v. State</u> , 425 So. 2d 64 (Fla. 3d DCA 1983)	. . . . .	4

PRELIMINARY STATEMENT

Michael Bedford was the defendant below and will be referred to as "appellant." The State of Florida was the plaintiff below and will be referred to as "appellee." References to the record will be preceded by "R." References to any supplemental record will be preceded by "SR."

STATEMENT OF THE CASE AND FACTS

Appellant was found guilty of the brutal kidnapping and murder of twenty-four year old Deborah Herdmann, whose nude body was found bound with duct tape by a dumpster behind a shopping center. See Bedford v. State, 589 So. 2d 245, 247 (Fla. 1991). Appellant was sentenced consecutively to death on the murder count and life imprisonment without parole on the kidnapping conviction. Id. at 253-54, appendix p. 1. Appellant challenged the convictions and sentences. The Florida Supreme Court affirmed the convictions, reversed appellant's death sentence, and affirmed appellant's life sentence without parole for kidnapping. Id. at 253-54.

In an order dated February 27, 1992, the trial judge vacated the original sentence and stated that the sentence on Count Two was to remain the same (R 27). In the actual sentencing orders, the trial judge resentenced appellant to consecutive terms of life, without the possibility of parole for twenty-five years (R 31-36). Appellant challenged the kidnapping sentence pursuant to Rule 3.800, claiming the sentence was illegal (R 44-48). The trial court denied appellant's motion (R 49). The Fourth District affirmed the sentence. Bedford v. State, 617 So.2d 1134 (Fla. 4th DCA 1993).

SUMMARY OF THE ARGUMENT

This issue has already been decided against appellant. This Court affirmed his life sentence without parole on the kidnapping charge.

POINT I

THE TRIAL COURT DID NOT ERR IN SENTENCING
APPELLANT.

This issue is res judicata. This Court has already approved appellant's life sentence without the possibility of parole for kidnapping. Appellant's sentence for kidnapping is not illegal and is not cognizable on a Rule 3.800 appeal. See Bedford v. State, 589 So. 2d 245, 254 (Fla. 1991), cert. denied, ___ U.S. ___, 112 S.Ct. 1773, 118 L.Ed.2d 432 (1992) (appendix p. 1). As "life" means "life," the imposition of a lesser mandatory minimum than originally imposed does not make the sentence illegal. Gibbs v. Wainwright, 303 So. 2d 7, 8 (Fla. 1974) (sentence that does not exceed statutory maximum will not be inquired into by appellate court). Appellee notes that appellant concedes that the sentence is within the statutory maximum (appellant's brief p. 11). But cf. Wright v. State, 425 So. 2d 64, 65 (Fla. 3d DCA 1983) and Gates v. State, 535 So. 2d 359 (Fla. 4th DCA 1989) (inconsistent statements regarding sentencing).

Appellee also notes that apparently there was a hearing on this matter (R 27), but appellant has not included a transcript of that hearing as part of the record on appeal. Accordingly, he cannot claim error. See Applegate v. Barnett Bank of Tallahassee, 377 So.2d 1150, 1152 (Fla. 1979) (appellant has burden of supplying complete record to demonstrate error). Appellee has no objection to this Court striking the provision providing that appellant be eligible for parole after twenty five years.

If this Court disagrees with the above, appellant's argument

that his sentence is limited to 40 years is still incorrect. Section 787.01(2) provides that kidnapping is "punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, 775.083, or s. 775.084." Section 775.082(3)(b) also provides for a sentence of a term of years not exceeding life imprisonment.

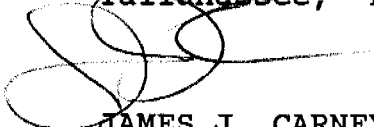
Under Section 787.01(2) appellant could be sentenced to any term of years, it just could not be called "life." See Alvarez v. State, 358 So. 2d 10, 12 (Fla. 1978) (125 year sentence proper - life expectancy should not be used in calculating sentence); Taylor v. State, 481 So. 2d 97, 98 (Fla. 3d DCA 1986) (sentence of 288 years is less than a life sentence); Wilson v. State, 622 So.2d 529, 530 (Fla. 2d DCA 1993) (65 year sentence for kidnapping proper); Salas v. State, 589 So.2d 343, 344 (Fla. 4th DCA 1991) (99 year sentence for kidnapping proper) and Powloski v. State, 467 So.2d 334 (Fla. 5th DCA 1985).

CONCLUSION

Based on the following argument and authorities, this Court should affirm.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

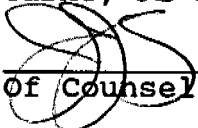


JAMES J. CARNEY
Assistant Attorney General
Florida Bar #475246
111 Georgia Avenue, Suite 204
W. Palm Beach, Florida 33401

Counsel for Appellee

CERTIFICATE OF SERVICE

I certify that a true copy of this document has been furnished by courier to Michael Bedford, #028348, Florida State Prison, P.O. Box 747, Starke, FL 32091, this 6 day of December 1993.



of Counsel

IN THE SUPREME COURT OF FLORIDA

CASE NO. 81,896

MICHAEL BEDFORD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appellee's Appendix

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

James J. Carney
Florida Bar no. 475246
Assistant Attorney General
111 Georgia Ave.
Suite 204
West Palm Beach, FL 33401

Counsel for Appellee

(as to Court II)

CHARLES RICH

The Defendant, being personally before this Court, accompanied by his attorney, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

- and the Court having on NOV. 22, 1988 deferred imposition of sentence until this date.
- and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that:

- The Defendant pay a fine of \$ _____, plus \$ _____ as the 5% surcharge required by F.S. 960.25.
- The Defendant is hereby committed to the custody of the Department of Corrections
- The Defendant is hereby committed to the custody of the Sheriff of Broward County, Florida. (Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

- For a term of Natural Life **WITHOUT PAROLE**
- For a term of _____
- For an indeterminate period of 6 months to _____ years.

If "split" sentence complete either of these two paragraphs

- Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

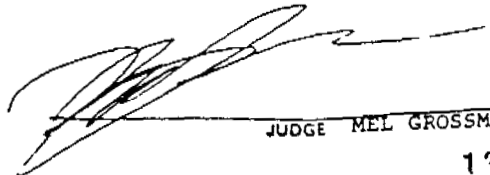
- Firearm - 3 year mandatory minimum* It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this court, as the Defendant possessed a firearm.
- Drug Trafficking - mandatory minimum* It is further ordered that the _____ year minimum provisions of F.S. 893.135(1)(b) are hereby imposed for the sentence specified in this court.
- Retention of jurisdiction* The Court pursuant to F.S. 947.18(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
- Habitual Offender* The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- Jail Credit* It is further ordered that the Defendant shall be allowed a total of 380 DAYS credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):
- Consecutive/Concurrent* It is further ordered that the sentence imposed for this court shall run consecutive to concurrent with (check one) the sentence set forth in court _____ above.
- Consecutive/Concurrent (As to other convictions)* It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run consecutive to concurrent with (check one) the following:
 - Any active sentence being served
 - Specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Broward County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.


In imposing the above sentence, the Court further **WAIVES THE VICTIM COSTS, THE ASSESSMENT AND THE \$200.00 TRUST FUND.**

DONE AND ORDERED in Open Court at Broward County, Florida, this 20th day of JANUARY A.D., 19 89 **BROWARD COUNTY, FLORIDA**


JUDGE MEL GROSSMAN
1989

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida



JAMES J. CARNEY
Assistant Attorney General
Florida Bar #475246
111 Georgia Avenue, Suite 204
W. Palm Beach, Florida 33401

Counsel for Appellee

CERTIFICATE OF SERVICE

I certify that a true copy of this document has been furnished
by courier to Michael Bedford, #028348, Florida State Prison, P.O.
Box 747, Starke, FL 32091, this 6 day of December 1993.



Of Counsel