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FILED
SID J. WHITE
DEC 30 1993
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

MICHAEL BEDFORD
APPELLANT

V.

CASE # 81,896

STATE OF FLORIDA
APPELLEE

REPLY BRIEF OF APPELLANT

SUBMITTED BY APPELLANT, IN PRO SE:

MICHAEL BEDFORD, 028348
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TABLE OF CONTENTS

TITLE PAGE ——— 1

TABLE OF CONTENTS ——— 2

CITATIONS OF AUTHORITY ——— 3

ARGUMENT IN RESPONSE TO APPELLEE'S ANSWER BRIEF ——— 4

CONCLUSION ——— 7

CERTIFICATE OF SERVICE ——— 8

CITATIONS OF AUTHORITY

CASE	CITE	PAGE
BUTLER V. STATE	343 So 2d 93 (FLA 3 DCA 1977)	7
CALL V. STATE	338 So 2d 1094 (FLA. 1 DCA 1976)	7
COLWELL V. STATE	418 So 2d 540 (FLA 5 DCA 1984)	5
EX PARTE HUNTER	16 FLA 575 (1878)	6
EX PARTE SIMMONS	73 FLA 998, 75 So 542 (1917)	6
FAISON V. VESTAL	71 FLA 562, 71 So 759 (1916)	6
GLEICHAUF V. STATE	344 So 2d 1310 (FLA 2 DCA 1977)	7
GREENHALGH V. STATE	582 So 2d 107 (FLA 2 DCA 1991)	5
IN RE CAMP	92 FLA 185, 109 So 445 (1926)	6
MARAZANO V. KINCHELOE,	915 F2d 569 (9th CIR 1990)	5-7
PLANT V. STATE	336 So 2d 437 (FLA 1 DCA 1976)	7
PRUNTY V. STATE	360 So 2d 417 (FLA 1 DCA 1978)	7
RALPH V. BLACKBURN	590 F2d 1335 (5th CIR 1979)	5-7
RUMMEL V. ESTELLE	587 F2d 651 (5th CIR 1978)	5
SANDERS V. STATE	386 So 2d 256 (FLA 1980)	4
TILGHMAN V. STATE	64 So 2d 555 (FLA 1953)	6
WALKER V. STATE	474 So 2d 319 (FLA 3 DCA 1985)	5
WHITE V. STATE	348 So 2d 382 (FLA 2 DCA 1977)	7

MISCELLANEOUS

FLORIDA STATUTE, $775.082	4-5-7
FLORIDA STATUTE, $787.01	4-5-7

ARGUMENT IN RESPONSE TO APPELLEE'S ANSWER BRIEF

THE STATE HAS BEEN INSISTENTLY CRYING THAT THIS CASE IS RES JUDICATA, AND APPELLANT HAS BEEN JUST AS OBSTINATELY REPETITIOUS IN HIS ARGUMENT THAT "A SENTENCE NOT AUTHORIZED BY LAW IS ALWAYS SUBJECT TO COLLATERAL ATTACK." SANDERS V. STATE, 386 So 2d 256 (FLA 1980). APPELLANT PRAYS THAT THIS COURT WILL TAKE JUDICIAL NOTICE OF THE FACT THAT APPELLANT WAS CHARGED, TRIED, AND FOUND GUILTY OF THE CRIME OF KIDNAPPING, F.S. 787.01, A FELONY OF THE FIRST DEGREE, PUNISHABLE BY IMPRISONMENT FOR A TERM OF YEARS NOT EXCEEDING LIFE, OR AS PROVIDED IN §775.082 ... SPECIFICALLY STATED: F.S. §775.082 (3)(a) STATES THAT A PERSON WHO HAS BEEN CONVICTED OF A LIFE FELONY COMMITTED ... ON OR AFTER OCTOBER 1, 1983, BY A TERM OF IMPRISONMENT FOR LIFE OR BY A TERM OF IMPRISONMENT NOT EXCEEDING FOURTY (40) YEARS. (CHGD. BY L. 1983, CHAP 87(1), EFF 10/1/83).

PLEASE NOTE EXHIBIT H, PAGE 37, WHICH SHOWS THE JUDGMENT PAPERS INCORRECTLY GIVING COUNT II, KIDNAPPING, §787.01, AS A LIFE FELONY. (THE CORRECT SENTENCE FOR COUNT I IS UNCONTESTED IN THIS ACTION.) THE ACTUAL ILLEGAL SENTENCE THAT APPELLANT RECEIVED FOR COUNT II WAS "IMPRISONMENT OF A TERM OF NATURAL LIFE, WITH THE ORDER THAT DEFENDANT SERVE NO LESS THAN 25 YEARS IN ACCORDANCE WITH THE PROVISIONS OF FLA. STAT. § 775.082 (1)." (THE PUNISHMENT RESERVED BY STATUTE FOR CAPITAL OFFENSES ONLY. IN THE RESENTENCING GUIDELINE SCORE SHEET, THE GUIDELINE SENTENCE OF 7-9 YEARS INCARCERATION. (THE OFFENSE IS LISTED AS A FIRST DEGREE FELONY PUNISHABLE BY LIFE, 181 POINTS).

NOW APPELLANT'S MAIN ARGUMENT RESTS ON ONE MAIN LEGAL FOUNDATION, THAT BEING THAT THE FLORIDA LEGISLATURE INTENDED THAT THE CRIME OF KIDNAPPING BE PUNISHED BY A TERM OF IMPRISONMENT FOR LIFE OR A TERM OF IMPRISONMENT NOT TO EXCEED FOURTY (40) YEARS. THE COURTS HAVE HELD THAT: "TO SENTENCE

FOR CRIME MORE SERIOUS THAN THE STATUTE UNDER WHICH CRIME WAS CHARGED IS FUNDAMENTAL ERROR." COLWELL V. STATE, 448 So2d 540 (FLA 5 DCA 1984). THIS HOLDING THAT A "SENTENCE THAT EXCEEDS MAXIMUM ALLOWED BY STATUTE IS FUNDAMENTAL ERROR..." HAS BEEN OBSERVED IN QUITE A NUMBER OF OTHER COURTS INCLUDING GREENHALGH V. STATE, 582 So2d 107 (FLA 2 DCA 1991); MARAZANO V. KINCHELO, 918 F2d 549 (9th CIR 1990); WALKER V. STATE, 474 So2d 319 (FLA 3 DCA 1985).

NOW REGARDLESS OF WETHER YOU GIVE THE APPELLANT A LIFE SENTENCE UNDER THE INCORRECTLY SCORED "LIFE FELONY" KIDNAPPING OR A LIFE SENTENCE UNDER THE CORRECTLY SCORED "FIRST DEGREE" KIDNAPPING PUNISHABLE BY LIFE DOESN'T REALLY MAKE ALL THAT MUCH OF A DIFFERENCE. THE KEY OFFENDING LANGUAGE WHICH MAKES THIS PARTICULAR SENTENCE CONSTITUTIONALLY INFIRM AND ILLEGAL IS THE LOWER COURT'S IMPOSITION OF A ORDER STATING THAT "DEFENDANT SERVE NO LESS THAN 25 YEARS IN ACCORDANCE WITH THE PROVISIONS OF F.S. §775.082(1)." THE COURTS HAVE STATED THAT "... A SENTENCE THAT EXCEEDS THE STATUTORY MAXIMUM HAS TRADITIONALLY BEEN VIEWED AS A VIOLATION OF THE EIGHTH AMENDMENT'S PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT." RALPH V. BLACKBURN, 590 F2d 1335, 1337 (5 CIR 1979); [SEE: E.G. RUMMEL V. ESTELLE, 5th CIR, 1978 (EN BANK) 587 F2d 651, AT 654 + CASES CITED AT nn 3-4, REV'G, 568 F2d 1193. THE HOLDING IN RUMMEL THAT "THE EIGHT AMENDMENT DOES PROSCRIBE SOME PUNISHMENTS THAT ARE SO DISPROPORTIONATE AS TO HAVE NO RATIONAL SUPPORT." 587 F2d AT 655, MERELY SUPPLEMENTS THE TRADITIONAL RULE THAT THE EIGHTH AMENDMENT BARS A PRISON SENTENCE BEYOND THE LEGISLATIVELY CREATED MAXIMUM. 590 F2d AT 1337, nn 3]

TO BE BLUNT AND TO THE POINT, HAD THE FLORIDA LEGISLATURE DESIRED TO IMPOSE THE SAME MINIMUM/MANDITATORY 25 YEAR SENTENCE, (WHICH IS THE PUNISHMENT RESERVED FOR CAPITAL FELONYS ONLY,) TO THE CRIME OF KIDNAPPING. F.S. 787.01, A FELONY OF THE FIRST DEGREE, THEY WOULD HAVE INCORPORATED THIS PUNISHMENT INTO SAID STATUTE. BUT UNTIL THEY DO SO, THE TRIAL COURT'S IMPOSITION

OF A MINIMUM/MANDITATORY 25 YEAR SENTENCE MAKES THAT SENTENCE CONSTITUTIONALLY INFIRM. APPELLANT ACKNOWLEDGES THAT AN EXCESSIVE SENTENCE DOES NOT VITIATE A JUDGMENT OF CONVICTION IN A CRIMINAL CASE, [SEE: TILGHMAN V. STATE, 64 So 2d 555 (FLA 1953)]. THE COURTS HAVE HELD THAT WHEN "... A SENTENCE IMPOSED IS IN EXCESS OF THE SENTENCE AUTHORIZED BY THE STATUTE FOR THE PUNISHMENT OF THE PARTICULAR OFFENSE, THE SENTENCE IS NOT VOID AB INITIO, BUT IS GOOD SO FAR AS THE POWER OF THE COURT EXTENDS AND IS INVALID ONLY AS TO ITS EXCESS." EX PARTE HUNTER, 16 FLA 575 (1878); FAISON V. VESTAL, 71 FLA 562, 71 So 759 (1916); EX PARTE SIMMONS, 73 FLA 998, 75 So 542 (1917); IN RE CAMP, 92 FLA 185, 109 So 445 (1926).

CONCLUSION

APPELLANT CONTENDS THAT THE TRIAL COURT'S IMPOSITION OF A TERM OF IMPRISONMENT OF LIFE WITH A MINIMUM / MANDITATORY 25 YEAR SENTENCE PROVISION, AS PER § 775.082 (1) F.S., IS PUNISHMENT IN EXCESS OF THE STATUTORY LIMITS AS SET FOR F.S. §787.01, AND PUNISHABLE BY F.S. §775.082 (3)(a).

APPELLANT PRAYS THAT THIS COURT WILL FIND MERIT IN HIS CLAIM. THAT THE ABOVE NOTED SENTENCE IS CLEARLY INCONSISTENT WITH THE REQUIREMENTS AND IS IN EXCESS OF THE MAXIMUM ALLOWED BY LAW. AS SUCH, APPELLANT REQUESTS THAT THIS COURT REVERSE THE FOURTH DISTRICT COURT OF APPEALS' ORDER DATED: MAY 12, 1993, WHEN IT AFFIRMED THE DENIAL OF APPELLANT'S MOTION FOR FLA. R. CRIM. P. RULE 3.800 (a) WHICH IN FACT MADE LEGAL THE IMPOSITION OF A CAPITAL SENTENCE FOR THE CRIME OF KIDNAPPING, A FIRST DEGREE FELONY, AND REMAND FOR PROPER CORRECTIVE RESENTENCING. PLANT V. STATE, 336 So 2d 437 (FLA 1 DCA 1976); CALL V. STATE, 338 So 2d 1094 (FLA 1 DCA 1976); BUTLER V. STATE, 343 So 2d 93 (FLA 3 DCA 1977); GLEICHAUF V. STATE, 344 So 2d 1310 (FLA 2 DCA 1977); WHITE V. STATE, 348 So 2d 382 (FLA 2 DCA 1977); PRUNTY V. STATE, 360 So 2d 147 (FLA 1 DCA 1978); RALPH V. BLACKBURN, SUPRA; MARAZANO V. KINCHELOE, SUPRA.

RESPECTFULLY SUBMITTED

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STATE OF FLORIDA)
)
)
COUNTY OF BRADFORD)

CERTIFICATE OF SERVICE

I CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING "REPLY BRIEF OF APPELLANT" HAS BEEN FURNISHED BY U.S. MAIL TO THE OFFICES OF THE FOLLOWING: MR. JAMES J. CARNEY, ASSISTANT ATTORNEY GENERAL, 111 GEORGIA AVENUE, SUITE 204, WEST PALM BEACH, FLORIDA 33401, ON THIS 28 DAY OF DECEMBER, 1993.

Michael Bedford
MICHAEL BEDFORD #028348
IN PRO SE.

SWORN TO AND BEFORE ME THIS 28th DAY OF DECEMBER 1993.

NOTARY PUBLIC

GEORGE D. HALL
Notary Public, State of Florida
My Comm. expires Dec. 27, 19
Comm. No. CC248210