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IN THE SUPREME COURT OF FLORIDA

BOBBIE DARIN THOMPSON,

Petitioner,

v.

CASE NO.: 82,502

STATE OF FLORIDA,

Respondent.

_____ /

RESPONDENT'S BRIEF ON THE MERITS

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MAY CONSECUTIVE ENHANCED SENTENCES BE
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RESPONDENT'S BRIEF ON THE MERITS

I PRELIMINARY STATEMENT

This is an appeal from the decision of the First District Court of Appeal. Thompson v. State, ____ So. 2d ____, 18 Fla. L. Weekly D2186 (Fla. 1st DCA Oct. 4, 1993).

All proceedings in the circuit court were held in Escambia County before Judge William H. Anderson. Petitioner was the defendant in the circuit court and the appellant in the district court. The State was the prosecutor and the appellee. The one-volume record on appeal will be referred to as "R".

STATEMENT OF THE CASE AND FACTS

Respondent is in agreement with Petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

The cases relied on by Petitioner, Brooks v. State, and Hale v. State, are not final as hearing is pending in both cases. Rehearing should be granted in these cases because this Court overlooked the fact that consecutive sentences are specifically authorized by Section 921.16, F.S., pursuant to the rationale urged on rehearing by Respondent in these cases. Accordingly, the certified question in this case should be answered in the affirmative.

CERTIFIED QUESTION/ISSUE PRESENTED

MAY CONSECUTIVE ENHANCED SENTENCES BE IMPOSED UNDER SECTION 775.084, FLORIDA STATUTES, FOR CRIMES GROWING OUT OF A SINGLE CRIMINAL EPISODE

Respondent recognizes that the same question certified in this case has recently been answered in the negative by this Court in Brooks v. State, 18 Fla. L. Weekly S 573 (Fla. Oct. 28, 1993) (rehearing pending), which relied on this Court's previous pronouncement in Hale v. State, 18 Fla. L. Weekly S 535 (Fla. Oct. 14, 1993) (rehearing pending).

It should be noted that rehearing is sought in Brooks and Hale because this Honorable Court has overlooked the fact that consecutive sentences are specifically authorized under Section 921.16, F.S., and nothing in Section 775.084 purports to artificially limit that authorization to two crimes committed in different episodes. Section 921.16(1), F.S. provides:

921.16 When sentences to be concurrent and when consecutive. --

(1) A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently. (emphasis supplied)

This legislative pronouncement must be accorded its plain and clear meaning. See e.g. State v. Barnes, 595 So. 2d 22 (Fla. 1992), and cases cited therein. Pursuant to the plain and unambiguous meaning of the statute, a sentencing court has discretion to make any non-guidelines sentence consecutive.

A glance at the history notes reveals that this statute has been present in some form since 1939. Also, subsection (2) was amended as recently as 1988 by Chapter 88-122, Laws of Florida - a lengthy act making extensive changes to parole and probation statutes. The habitual felony offender statute was also significantly amended in 1988 by Chapter 88-131, Laws of Florida.

The Legislature is presumed to know all the statutory law when amending one part. Floyd v. Bentley, 496 So. 2d 862, 863 (Fla. 2d DCA 1986), rev. den. 504 So. 2d 767 (Fla. 1987). Here, the Legislature addressed §921.16 and §775.084 in the same year and did nothing in §775.084 to limit §921.16.

By overlooking §921.16 in deciding Brooks and Hale, this Court has rendered that statute meaningless when a court sentences a habitual felon for multiple offenses committed in one episode contrary to the expressed legislative intent. Courts are not to adopt constructions that render a statute meaningless. See Floyd, supra at 846: "Accordingly, courts have a duty to adopt a scheme of statutory construction which

harmonizes and reconciles two statutes and to find a reasonable field of operation that will preserve the force and effect of each."

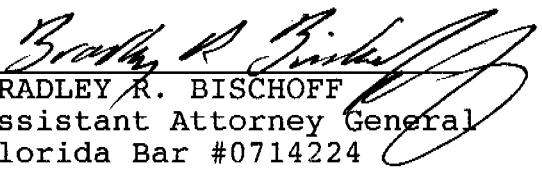
Consequently, Respondent respectfully urges this Honorable Court to reconsider its decisions in Hale and Brooks and find that consecutive enhanced sentences imposed pursuant to §775.084 and growing out of a single criminal episode are legislatively authorized, thereby compelling this Court to answer the certified question in this case in the affirmative.

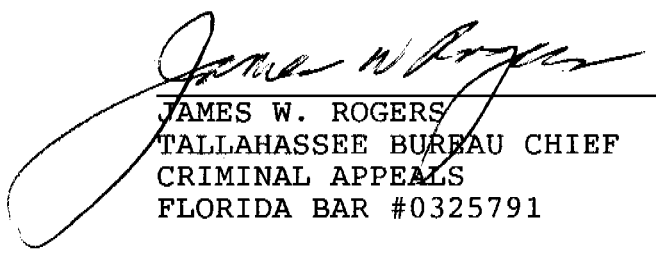
CONCLUSION

Based on the above argument and citations of legal authorities, Respondent respectfully urges this Honorable Court to answer the certified question presented in this case in the affirmative.

Respectfully submitted,

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BRADLEY R. BISCHOFF
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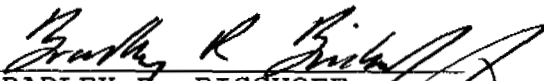

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to Kathleen Stover, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 23rd day of November, 1993.


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Assistant Attorney General