FILED
SID J. WHITE
FEB 2 1994
CLERK, SUPREME COURT
By
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

JAY ROBINSON YOUNG,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. 83,000

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts with the following additions:

At the final sentencing hearing, the following occurred:

> [MR. AARON (defense counsel)]:...There's no indication whatsoever that on...February 21, 1984, this man knew and waived his basic constitutional rights. And specifically, Your Honor, I think it's very critical in terms of the consequences of his plea, that upon a subsequent conviction he could be charged as a felon. There's no indication that that was done. As a matter of fact, the only information and the only testimony and evidence we have is to the contrary, that which is offered by--
>
> THE COURT: Let me ask you something. Are you coming in here as an officer of the Court and admitting, one, that you violated the code of professional responsibility, and, two, that you committed malpractice? Are you coming in here today saying that to me?
>
> MR. AARON: No, Your Honor. And I'm not prepared to respond to any of those issues. The only issue I'm here to--
>
> THE COURT: I just wanted to ask you if-- I want to--
>
> MR. AARON: No, no.
>
> THE COURT: --make sure you're not representing that.
>
> MR. AARON: If somebody wants to make an accusation against me, then I can defend myself. But I'm here to represent this man. The only issue I'm concerned about is whether in [sic] February 21, 1984 it was a knowing and intelligent waiver. I'm here to resolve and address that particular issue.
>
> If the state attorney's office or anybody else, or my client raise another issue of my conduct, if they give me something in writing,

> I can respond to it. I'm not saying that. Based upon what we have here, the record is clear that there was no waiver.
>
> THE COURT: Let me ask you this, Mr. Aaron. As an officer of the Court you submitted a proposed attorney--court-appointed attorney's fee and affidavit. And you have provided in that that you had a conference with your client on the 20th of December for forty-five minutes. You've indicated that you had a conference with your client on the 26th of December, both in 1983, for forty-five minutes. You've indicated that you had another conference with your client on the 16th of January, 1984 for thirty minutes. And you logged that timing, and you billed it out, and the taxpayers paid you a court-appointed attorney's fee for those conferences. Are you telling the Court that that's inaccurate?
>
> MR. AARON: No, I'm not.
>
> THE COURT: Are you telling the Court that that actually is true?
>
> MR. AARON: If I filed it, it's true.
> (R 338-340)

The prosecutor then argued, inter alia, that Petitioner had "been in here with an attorney who has evaded questions as an officer of the court to this particular critical issue. That, as a factual matter, then may find no resolution" (R 341). She further pointed out: "There is to my knowledge no specific requirement in any petit theft case that it be documented for the record that that defendant on that day knows that that behavior if continued will result in an enhancement" (R 342).

Following further argument by both attorneys, the trial court stated:

> Okay. All right, Mr. Young. The Court finds that it has been established that you have two prior petit theft convictions, in particularly

> [sic] concerning the second conviction where you're now complaining about certain rights that you didn't understand.
>
> Having reviewed that court file, your statement of rights indicates all of those things that you have now indicated that that's your signature on. You even invoked your right to have an attorney represent you; and the court did appoint you a court-appointed attorney, which was the public defender, who then turned around and conflicted out. And then Mr. Aaron was appointed to represent you. And it's clear that Mr. Aaron had numerous conferences with you and went over with you and spent ample time with you, based on this same court file.
>
> (R 344-345)

SUMMARY OF THE ARGUMENT

Respondent agrees that the opinion below is in conflict with an opinion by the Fourth District Court of Appeal.

ARGUMENT

> WHETHER CONFLICT EXISTS BETWEEN THE INSTANT DECISION AND A DECISION OF THIS COURT OR OTHER DISTRICT COURTS ON THE ISSUE OF WHETHER A DEFENDANT'S PRIOR PETIT THEFT CONVICTIONS MUST BE ALLEGED IN THE CHARGING DOCUMENT IN ORDER FOR THE DEFENDANT TO BE ADJUDICATED GUILTY OF FELONY PETIT THEFT AND SENTENCED ACCORDINGLY.

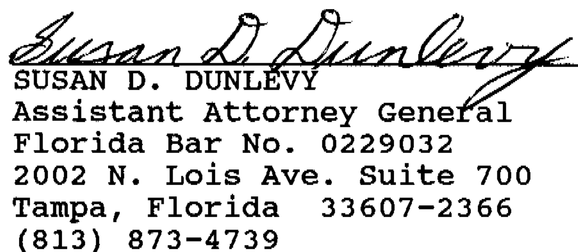
Respondent agrees with the Second District Court of Appeal and with Petitioner that the decision sought to be reviewed, which follows *State v. Crocker*, 519 So. 2d 32 (Fla. 2d DCA 1987), conflicts with *Clay v. State*, 595 So. 2d 1052 (Fla. 4th DCA 1992). Respondent further agrees with Petitioner that the conflict should be resolved.

CONCLUSION

Based on the foregoing facts, argument, and citations of authority, Respondent respectfully joins Petitioner in requesting that this Honorable Court exercise its discretion to review the instant case and resolve the existent conflict.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Robert F. Moeller, Assistant Public Defender, P.O. Box 9000—Drawer PD, Bartow, Florida 33830, this 31st day of January, 1994.

OF COUNSEL FOR RESPONDENT