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BEFORE THE FLORIDA SUPREME COURT

**FILED**  
SID. J. WHITE  
FEB 2 1995  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

R.M. OROSZ,  
Petitioner,

v.

HARRY K. SINGLETARY, JR.,  
Secretary, Department of Corrections,  
Respondent.

CASE NO.: 83,487

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**SUPPLEMENTAL BRIEF OF PETITIONER**

ORIGINAL PROCEEDING FOR WRIT OF MANDAMUS

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**LAWS**

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**STATUTES**

§ 944.27, Florida Statutes (1977) . . . . . 1

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§ 944.271, Florida Statutes (1977) . . . . . 1

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§ 944.79, Florida Statutes (1977) . . . . . 1

## PREFACE

By Order dated January 19, 1995, this Court requested both parties to provide supplemental briefing on the impact of Chapter 78-304, § 2, Laws of Florida, on the issue of whether the Department of Corrections was authorized to combine Petitioner's consecutive sentences for the purpose of calculating gain-time.

## SUPPLEMENTAL ARGUMENT

In 1978 the Florida Legislature repealed all forms of gain-time contained in statute sections 944.27, 944.271 and 944.79. Ch.78-304, § 2, Laws of Fla.

The Legislature simultaneously enacted new gain-time statutes under section 944.275. Ch.78-304, § 1, Laws of Fla.

The new 1978 gain-time laws were more restrictive. For example, the new law provided fewer days basic gain-time. See e.g., Weaver v. Graham, 450 U.S. 24, 101 S. Ct. 960, 67 L. Ed. 2d 17 (1981). Significantly, the 1978 law also removed new consecutive sentences from the favorable, combined gain-time calculations.

Part of the repealed 1977 statute was sub-section 944.27(2) which provided: "When a prisoner is under two or more cumulative sentences, he shall be allowed gain time as if they were all one sentence and his gain time, including any extra gain time allowed him under § 944.29, shall be subject to forfeiture as though such sentence were all one sentence." § 944.27(2), Fla. Stat. (1977) (emphasis added).

It was section 944.27(2) that the First District Court construed in Kimmons v. Wainwright, 338 So. 2d 239 (Fla. 1st DCA 1976), cert. denied, 346 So. 2d 1249 (Fla.), cert. denied, 434 U.S. 843, 98 S. Ct. 142, 54 L. Ed. 2d 107 (1977) and Nelson v. Wainwright, 374 So. 2d 1172 (Fla. 1st DCA 1979).

In place of section 944.27(2) (1977) the Legislature substituted sub-section 944.275(4) (Supp. 1978) which stated: "When a prisoner is under two or more concurrent sentences, the prisoner shall be allowed gain-time as if such sentence were all one sentence, and the prisoner's gain-time, including any extra gain time allowed him under subsection (2) and extra gain-time allowed under subsection (3) shall be subject to forfeiture as though such sentence were all one sentence." Ch. 78-304, § 1, Fla. Laws (emphasis supplied).

The change is significant. Subsection 944.275(4) (Supp. 1978) only permits combining gain-time for concurrent, not consecutive sentences. The instant case deals with a consecutive sentence.

Through the 1978 law, the Legislature repealed any authority of Respondent to combine consecutive sentences for computing or forfeiting gain-time. After October 1, 1978 Respondent could not combine consecutive sentences.

Petitioner committed the offense resulting in his 1979 sentence on October 31, 1978, or twenty-one days after the repeal of subsection 944.27(2). Respondent lacked statutory authority to

combine Petitioner's 1979 sentence together with the former 1975 sentence.

Respectfully submitted,

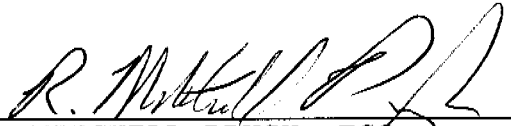


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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of Petitioner's Supplemental Brief was sent to SUSAN A. MAHER, ESQ., Deputy General Counsel, Department of Corrections, 2601 Blair Stone Road, Tallahassee, Florida, 32399-2500 this 1st day of February, 1995.

  
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R. MITCHELL PRUGH, ESQ.