

FILED

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OCT 21 1992

CLERK SUPREME COURT
By _____ Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

CHADWICK BANKS,)
Appellant,)
v.)
STATE OF FLORIDA,)
Appellee.)
_____)

CASE NO. : 83,774
LOWER CASE NO. : 92-841-CFA

On appeal from the Circuit Court of the Second
Judicial Circuit, in and for Leon County, Florida

ANSWER BRIEF OF CROSS-APPELLEE

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TABLE OF CONTENTS

Page No.

TABLE OF CONTENTS i
STATEMENT OF THE ISSUES 1
ARGUMENT 2

ISSUE I:

THE TRIAL COURT ERRED AS A MATTER OF
LAW IN FAILING TO CONSIDER BANKS'
TWO PRIOR VIOLENT FELONY CONVICTIONS
IN AGGRAVATION 2

CONCLUSION 3
CERTIFICATE OF SERVICE 4

STATEMENT OF ISSUES

ISSUE I.

THE TRIAL COURT ERRED AS A MATTER OF
LAW IN FAILING TO CONSIDER BANKS'
TWO PRIOR VIOLENT FELONY CONVICTIONS
IN AGGRAVATION

ARGUMENT

ISSUE I:

**THE TRIAL COURT ERRED AS A MATTER OF
LAW IN FAILING TO CONSIDER BANKS'
TWO PRIOR VIOLENT FELONY CONVICTIONS
IN AGGRAVATION**


Cross-appellee concedes that the adjudications of guilt as to Banks' prior felonies may properly have been considered as aggravation, but asserts that both the jury and the trial court may just as well **have** rejected these convictions as aggravation. Because the two prior convictions were for aggravated assault (the lowest form of felony), and had initially resulted in adjudications of guilt being withheld and in probation, the jury and the court may well have determined that the prior felonies did not rise to the level **of** aggravating factors. Acceptance of **the** priors as aggravation is not mandatory, and the trial court did not err by rejecting this factor, if other grounds exist upon which to base such **a** rejection.

CONCLUSION

The trial court did not err in rejecting the prior convictions of aggravated assault as aggravating factors.

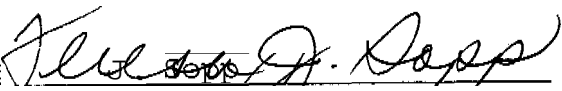
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Curtis M. French, Assistant Attorney General, the Capitol, Tallahassee, Florida 32301, by regular United States Mail this 16th day of October, 1996.

T~~e~~ 
Attorney for Appellant