

IN THE SUPREME COURT of Florida

017

JAMES ARMSTRONG,  
Petitioner,

v.

CASE No. 84-283

STATE of Florida,  
respondent.

**FILED**

SID J. WHITE

OCT 13 1994

CLERK, SUPREME COURT

By Chief Deputy Clerk

PETITIONER'S BRIEF ON THE MERITS

James Armstrong Pro se  
D.C. No. 324579 MB. No B-71  
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Singleton v. State,  
554 So. 2d 1162 (Fla. 1990).

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## STATEMENT OF THE CASE

IN MAY OF 1986 THE PETITIONER WAS CHARGED IN A THREE COUNT INFORMATION FOR: (COUNT I) SHOOTING AT, WITHIN, OR INTO AN OCCUPIED VEHICLE; (COUNT II) AGGRAVATED ASSAULT; AND (COUNT III) ATTEMPTED AGGRAVATED BATTERY. THE PETITIONER PLED GUILTY TO THE LESSER INCLUDED OFFENSES OF ATTEMPTED AGGRAVATED ASSAULT (AS TO COUNT II) AND BATTERY (AS TO COUNT III) AND (COUNT I) WAS NOT PROSECUTED. ON THE 28, DAY OF OCTOBER 1987 PETITIONER WAS SENTENCED TO ONE YEAR PROBATION ON EACH COUNT TO RUN CONCURRENT WITH THE OTHER. PRIOR TO THE EXPIRATION OF THE PROBATION PETITIONER VIOLATED THE CONDITION OF HIS PROBATION BY AN UNRELATED INFORMATION FILED IN THE CIRCUIT COURT OF ORANGE COUNTY, FLORIDA, WITH THE OFFENSE OF SECOND DEGREE MURDER. THE PETITIONER WAS TRIED AND FOUND GUILTY AS CHARGED, AND WAS SENTENCED TO SEVENTEEN (17) YEARS INCARCERATION. AND ON THE 26, DAY OF SEPTEMBER 1988, AN ALLEGED FOUR (4) BREACH AFFIDAVIT OF PROBATION VIOLATION WAS FILED ON THE PETITIONER. ON THE 23, OF NOVEMBER 1988, PETITIONER ENTERED A PLEA OF NO-CONTEST TO ONLY ONE (1) OF THE FOUR (4) BREACH FILED IN THE AFFIDAVIT. THE OTHER ALLEGED VIOLATIONS WERE NOT HEARD BY THE TRIAL COURT. THE TRIAL COURT ACCEPTED PETITIONER'S PLEA TO THE SINGLE CONDITION THAT HE PLEADED TO, AND REVOKED PETITIONER'S PROBATION, ADJUDICATED HIM GUILTY, AND SENTENCED HIM

to 364 days in the Seminole County Jail on Count II and 364 days in the Seminole County Jail on Count III. The sentences were ordered to run consecutive to each other and consecutive to the Orange County conviction for which the Petitioner is currently incarcerated. On the 18, day of April 1994, Petitioner filed a motion to correct illegal sentence arguing that the trial court erred in imposing consecutive one year sentences in the County Jail for two misdemeanor convictions which were charged in the same information. On the 7, day of June 1994, the trial court denied the motion, Petitioner timely appealed, and on the 12, day of August 1994, the Fifth district court of appeal issued a written opinion affirming the decision of the trial court, but stated that it acknowledge conflict with an other district court opinion.

## SUMMARY OF ARGUMENT

It was error for the trial Court to sentence Petitioner to two consecutive years in the County jail when the sentences were not a part of the disposition of any other pending charges. Consecutive County jail sentences that cumulatively exceed one year may be imposed only when the imposition occurs in separate sentences for unrelated convictions.

## ARGUMENT

The trial court erred in imposing consecutive one year sentences in the County Jail for two misdemeanor convictions which were changed in the same information.

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Petitioner contends that the trial court erred in imposing consecutive one year sentences in the County Jail for two misdemeanor convictions which were changed in the same information. The sentences were not a part of the disposition of any other pending charges all stemmed from the same incident. In support of the argument, Petitioner relies upon the holding in McGaughey v. State, 632 So. 2d 1154 (Fla. 4th DCA 1994), and also this Court decision in Singleton v. State, 554 So. 2d 1162 (Fla. 1990), that consecutive County Jail sentences that cumulatively exceed one year may be imposed only when the imposition occurs in separated sentences and for unrelated convictions.

## CONCLUSION

Based on the arguments and authorities presented herein, Petitioner respectfully prays this honorable Court reverse the decision of the District Court of Appeal, Fifth District.

Respectfully submitted,

James Armstrong

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing Petitioner's Brief on the merits has been furnished by U.S. mail to the Honorable Robert A. Butterworth, Attorney General, 210 North Palmetto Avenue, Suite 447, Daytona Beach, Florida on this 7, day of October 1994.

James Armstrong  
James Armstrong Pro se.



CERTIFICATE OF NOTARY

STATE of Florida)  
COUNTY of Polk)

Before me the undersigned authority, this day personally appeared James Armstrong Pro se, who first being duly sworn say that he is the Petitioner in the above stated cause, and that he has read the foregoing Petitioner's Brief on the merits, and has personal knowledge of the facts and matters therein set forth and alleged; and that each and all of these facts and matters are true and correct.

~~10-7-94 Omit  
JAMES ARMSTRONG Pro se,  
D.C.#324579 MB# B-71  
Polk Correctional Institution  
3876 EDANS Rd. Box 62  
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Sworn and subscribed before me  
this 7<sup>th</sup> day of October 1994.  
JOC Picture O.D. rec'd for identification  
DATE TAKEN

Patricia O. Craft  
NOTARY PUBLIC:



PATRICIA ONN CRAFT  
MY COMMISSION # 00273395 EXPIRES  
April 1, 1997  
BONDED THRU TRACY FAIN INSURANCE, INC.

April 1, 1997  
MY COMMISSION EXPIRES: