

**FILED**

SID J. WHITE

OCT 27 1994

CLERK, SUPREME COURT

By             
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

JAMES ARMSTRONG,  
Petitioner,

v.

CASE NO. 84,283

STATE OF FLORIDA,  
Respondent.

\_\_\_\_\_ /

ON APPEAL FROM THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

PAGES:

TABLE OF AUTHORITIES.....ii

STATEMENT OF THE CASE AND FACTS.....1

SUMMARY OF ARGUMENT.....2

ARGUMENT

THE HOLDING OF THE DISTRICT COURT IS  
CONSISTENT WITH PRIOR DECISIONS OF  
THIS COURT.....3

CONCLUSION.....4

CERTIFICATE OF SERVICE.....4

TABLE OF AUTHORITIES

CASES:

PAGES:

Armstrong v. State,  
19 Fla. L. Weekly D1725  
(Fla. 5th DCA August 12, 1994).....3

Carson v. State,  
635 So. 2d 1007 (Fla. 5th DCA 1994).....3

Gwynn v. Orange County Bd. of County Comm'rs,  
527 So. 2d 866 (Fla. 5th DCA 1988).....3

McGauley v. State,  
632 So. 2d 1154 (Fla. 4th DCA 1994).....3

Singleton v. State,  
554 So. 2d 1162 (Fla. 1990).....3

OTHER AUTHORITIES

3.800(a), Fla. R. Crim. P.....1

STATEMENT OF THE CASE AND FACTS

The offender was placed on probation for committing two first-degree misdemeanors. When he subsequently violated his probation, he was sentenced to consecutive one-year jail sentences for each misdemeanor. He moved for post-conviction relief under Rule 3.800(a), Fla. R. Crim. P. by claiming the consecutive county jail sentences were illegal. The trial court denied the motion, and the district court affirmed, but acknowledged conflict. This petition follows.

SUMMARY OF ARGUMENT

Jurisdiction should be denied as the decision of the district court is consistent with other holdings of this Court.

ARGUMENT

THE HOLDING OF THE DISTRICT COURT IS  
CONSISTENT WITH PRIOR DECISIONS OF  
THIS COURT.

In deciding this case the district court noted that Singleton v. State, 554 So. 2d 1162 (Fla. 1990) applies to consecutive sentences of county jail time for felonies punished under the sentencing guidelines. Armstrong v. State, 19 Fla. L. Weekly D1725 (Fla. 5th DCA August 12, 1994). In as much as the instant offender was sentenced for two misdemeanors, Singleton does not apply. See also Carson v. State, 635 So. 2d 1007, 1008 (Fla. 5th DCA 1994) ("[A] defendant can be sentenced to more than one year in the county jail if convicted of multiple misdemeanor offenses. Gwynn v. Orange County Bd. of County Comm'rs, 527 So. 2d 866 (Fla. 5th DCA 1988).").

The court acknowledged conflict with McGauley v. State, 632 So. 2d 1154 (Fla. 4th DCA 1994).

CONCLUSION

Based on the aforestated points and legal authorities, the State respectfully requests that this court deny the above-styled petition.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

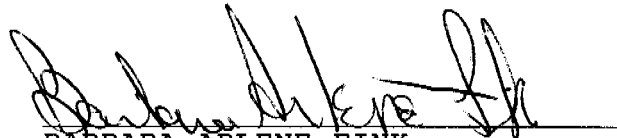


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing brief has been furnished by U. S. Mail to James Armstrong DC# 324579 M.B. B-71, Polk Correctional Institution, 3876 Evans Rd., Box 50, Polk City, FL 33868-9213, on this 25th day of October, 1994.



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