

WOODA
IN THE SUPREME COURT OF Florida 017

App reg
FILED

SID J. WHITE

JAN 9 1995

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

JAMES ARMSTRONG,
Petitioner,

CASE NO. 84, 283

VERSUS

STATE of Florida,
respondent,

PETITIONER'S BRIEF ON THE MERITS

JAMES ARMSTRONG Pro se,
D.C. #324549 MB# B-71
POLK CORRECTIONAL INSTITUTION
3876 EVANS RD. Box 50
POLK CITY, Florida 33868-9213

TABLE OF CONTENTS

<u>NUMBER</u>	<u>PAGES</u>
<u>TABLE OF CONTENTS</u>	i
<u>TABLE OF CITATIONS</u>	ii
<u>STATEMENT OF THE CASE AND FACTS</u>	1, 2,
<u>SUMMARY OF ARGUMENT</u>	3,
<u>ARGUMENT:</u> 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.	4, 5,
<u>CONCLUSION</u>	5,
<u>CERTIFICATE OF SERVICE</u>	6,

TABLE OF CITATIONS

CASES CITED:

PAGE NUMBER

McGawley v. State

632 So. 2d 1154 (Fla. 4th DCA 1994) 4

Singleton v. State

554 So. 2d 1162 (Fla. 1990) 5

STATEMENT OF THE CASE AND FACTS

IN May of 1986, 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. on the 31, day of August 1987, Petitioner entered into a plea of guilty for an lesser included offenses of attempted aggravated assault, (as to Count-II), and Battery (as to Count-III), and (Count-I) was Nolle Prosequied. And on the 28, day of October 1987, Petitioner's was sentenced to one year probation on each count to run concurrent with the other.

Prior to the expiration of probation, Petitioner subsequently, violated his probation based on an information filed in the Circuit Court of Orange County, Florida, with the offense of second degree murder.

on the 26, day of September 1988, an allege (4) four breach affidavit of probation violation was filed upon the petitioner on the 23 day of November 1988, petitioner's entered a plea of no contest to (1) one of the (4) four allege breach of probation violation, The other three (3) alleged violations breach were not heard by the trial court. upon accepting the petitioner plea

STATEMENT OF THE CASE AND FACTS
CONTINUE:

of no contest to the single condition of rescission of probation, the trial court rescinded petitioner's probation, adjudicated him guilty, and sentenced him to 364 days in the County Jail on Count-II and 364 days in the County Jail on Count-III.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 pursuant rule 3.800(c), on the 7, day of June 1994, the trial court issue an opinion denied the motion. Petitioner appealed to the Fifth District Court of appeal, and on the 12 day of August 1994 the District Court issues an written opinion affirming the trial court decision, but acknowledged conflict with the Fourth District Court of appeal.

SUMMARY OF ARGUMENT

Petitioner sentences should be vacated and remand with direction that the sentences in both Court be imposed to run concurrently, because the decision of district Court is inconsistent with the holding of this Court.

ARGUMENT

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.

Petitioner contends that his sentence is illegal following revocation of probation.

Petitioner was originally placed on probation for committing two first-degree misdemeanors. Petitioner subsequently violated his probation, and he pled no contest to violating his probation, he received consecutive one-year jail sentences for each misdemeanor. Petitioner contends that his two year sentence to the County Jail is contrary to the holding in McGauley v. State, 632 So 2d 1154 (Fla. 4th DCA 1994), which holds that consecutive one-year jail sentences for misdemeanor convictions are not permitted, because the sentences were not a part of the disposition of any other pending charges, and the charges all stemmed from the same incident. McGauley,

Followed this Court ruling in Singleton v. State, 554 So. 2d 1162 (Fla 1990) which holds that consecutive County jail sentences that cumulatively exceeds one year may be imposed only when the imposition occurs in separate sentencing for unrelated convictions.

Therefore since petitioner misdemeanor convictions was arise out of a single criminal episode, he cannot be sentenced to more than one-year stint in the County jail.

Conclusion

For the reasons expressed herein, Petitioner respectfully requests that this Honorable Court to reverse and vacate of the instant sentences in the above case and remand with directions for resentencing.

Respectfully submitted,
James Armstrong
James Armstrong Pro-se,
Polk Correctional Institution
D.C. #324579 M.B. # B-71
3876 Evans Rd. Box 50
Polk City, Florida 33868-9213

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 Barbara Arlene Fink, assistant attorney general 444 Seabreeze Blvd. 5th Floor, Daytona Beach, Florida 32117, on this 4 day of January 1995.

James Armstrong
JAMES ARMSTRONG PRO SE