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FILED
SID J. WHITE
JAN 25 1995
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

MERITS BRIEF OF APPELLEE

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SUMMARY OF ARGUMENT

The sentencing guidelines do not apply to misdemeanors. As a result, an offender may be sentenced to more than one year in the county jail if convicted of multiple misdemeanors.

ARGUMENT

THE MOTION FOR POST CONVICTION
RELIEF WAS PROPERLY DENIED WHEN THE
OFFENDER WAS SENTENCED TO
CONSECUTIVE ONE YEAR COUNTY JAIL
TERMS FOR MULTIPLE MISDEMEANORS.

It is well established law that the sentencing guidelines do not apply to misdemeanors. Kline v. State, 509 So. 2d 1178 (Fla. 1st DCA 1987); c.f. Singleton v. State, 554 So. 2d 1162, 1164 n. 2 (Fla. 1990). The instant offender received consecutive one-year jail sentences for two misdemeanor violations. While it is true that more than one year of incarceration in a county jail is not permitted under §922.051 Fla. Stat., it is also true that said section applies solely to the imposition of county jail as an alternative to state prison in a felony conviction. Cigelski v. State, 470 So. 2d 46 (Fla. 1st DCA 1985). As a result, §922.051 Fla. Stat. does not apply to the case at bar, and neither do the line of cases addressing the propriety of consecutive one year sentences in county jail following felony convictions.

Applicable cases are those which address the issue of consecutive one-year sentences in county jail for multiple misdemeanors. The Fifth District has long approved such sentences. Gwynn v. Orange County, 527 So. 2d 866 (Fla. 5th DCA 1988); Carson v. State, 635 So. 2d 1007 (Fla. 5th DCA 1994). In deciding McGauley v. State, 632 So. 2d 1154 (Fla. 4th DCA 1994), the Fourth District applied the sentencing guidelines to misdemeanors. This misapplication clearly violates the rule of law established by Kline, 509 So. 2d 1178, and its progeny,

including Singletary, 554 So. 2d 1162, and to exacerbate this error would, by judicial fiat rather than legislative act, place all misdemeanors within the guidelines. So doing would greatly overburden the courts with a flood of collateral attacks on convictions, and it would place the court in the position of law maker instead of law interpreter.

CONCLUSION

Based on the aforesated points and legal authorities, the Respondent respectfully requests that this honorable court affirm the opinion of the lower court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing 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 23rd day of January, 1995.



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