

IN THE SUPREME COURT OF Florida

FILED

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CLERK, SUPREME COURT

By

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JAMES ARMSTRONG,
Petitioner,

VERSUS

CASE No. 84, 283

STATE of Florida,
Respondent

PETITIONER'S REPLY BRIEF ON THE
MERITS

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Summary of Argument

Section 922.051 Florida Statutes contains no provision permitting trial courts to exercise its discretion in imposing consecutive one year county jail terms for multiple misdemeanor offenses which arose out of the same criminal episode.

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.

The petitioner contends that the argument in respondent's brief on the merits is based upon an erroneous interpretation of 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); McGaughey v. State, 632 So. 2d 1154 (Fla. 4th DCA 1994), which holds that consecutive County jail sentences that cumulatively exceed one year may be imposed only when the imposition occurs in separate sentencing for unrelated convictions.

Thus, while it may be true that guidelines do not apply to misdemeanors, that is irrelevant to the instant case, because that is not the issue at bar. The issue at bar is whether can a defendant be sentenced to consecutive one year term in the County jail for misdemeanor convictions which arose during a single criminal episode.

The respondent, however, ignores the fact that the two misdemeanor offenses in the instant case were factors that were weighed in the original

sentencing and must continue to be treated in relation to each other, even after the sentence has been violated.

The Florida Supreme Court has issued several opinions prohibiting consecutive sentences arising from multiple crimes committed during single criminal episode. Palmer v. State, 438 So. 2d 14 (Fla. 1983); Daniels v. State 595 So. 2d 952 (Fla. 1992); Wale v. State 630 So. 2d 521 (Fla. 1993). Petitioner's asserts that although those line of cases pertains to felonies convictions, and also involve different enhancement statute, the same principle must applies for multiple misdemeanor offenses which arose out of the same incident.

The ruling the Fifth District addressed in Gwynn v. Orange County, 527 So. 2d 866 (Fla. 5th DCA 1988); Carson v. State, 635 So. 2d 1007 (Fla. 5th DCA 1994); Armstrong v. State, 640 So. 2d 1725 (Fla. 5th DCA 1994). are inconsistent with the holding of this court in Singleton, section 922.051 Florida Statutes, contains no provision permitting trial court to exercise its discretion in imposing consecutive one year county jail terms for multiple misdemeanors which arose out of a single criminal episode. (imposition of consecutive sentences for misdemeanor offenses which arose out of a single episode is a matter of legislative prerogative).

CONCLUSION

Wherefore, based on the aforesaid points and legal authorities, the petitioner respectfully requests that this honorable Court reverse 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 reply brief has been furnished by U.S. mail to Barbara Arlene Link, Assistant Attorney General 444 Seabreeze Blvd 5th Floor Daytona Beach, Florida 32118 on this 7 day of February 1995.

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