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APP **FILED**
SID. J. WHITE
OCT 13 1994

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

TYRONE STEPHAN JACKSON, :
 :
 Petitioner, :
 :
 v. :
 :
 STATE OF FLORIDA, :
 :
 Respondent. :

CASE NO. 84,475

_____ /

JURISDICTIONAL BRIEF OF PETITIONER

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PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

TYRONE STEPHAN JACKSON,

Petitioner,

v.

CASE NO. 84,475

STATE OF FLORIDA,

Respondent.

_____ /

JURISDICTIONAL BRIEF OF PETITIONER

PRELIMINARY STATEMENT

Any references to the record proper shall be by the letter "R" followed by the appropriate page number. Any references to the transcript shall be by the letter "T" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

By second amended information filed on April 5, 1993, petitioner was charged with having committed attempted armed robbery and two counts of second-degree felony murder on or between August 11 and 12, 1992. (R-39).

Petitioner proceeded to jury trial and on April 8, 1993, he was found guilty of attempted robbery with a firearm, and both counts of second-degree felony murder. (R-42-43).

On April 23, 1993, petitioner was sentenced to life, with credit for 255 days jail time, with a minimum mandatory 15-year sentence imposed as an habitual violent felony offender for both counts of second-degree felony murder, with each count to run concurrently with the other. For attempted armed robbery with a firearm, he was sentenced to 30 years in prison with a 3-year minimum mandatory sentence imposed, with this sentence to run consecutively to petitioner's sentences on the second-degree felony murder counts. (In Count I, petitioner was also sentenced to the 10-year minimum mandatory required by the habitual violent felony offender statute.) (R-91).

Notice of appeal was timely filed on April 23, 1993. (R-96).

On September 8, 1994, the Florida First District Court of Appeal issued its opinion in this case (appendix). The Florida First District Court of Appeal affirmed all three of petitioner's convictions and affirmed the sentences on the felony murder convictions but reversed the sentence imposed for attempted armed robbery.

Under the authority of Hale v. State, 630 So.2d 521 (Fla. 1993), and Brooks v. State, 630 So.2d 527 (Fla. 1993) the sentence for attempted armed robbery which was imposed to run consecutively to the sentences on the felony murders was reversed and ordered to run concurrently with the felony murder sentences because all three involved habitual offender penalties. (Slip op. at 3).

However, the court allowed the minimum mandatory firearm sentence imposed upon petitioner to run consecutively to the habitual offender minimum mandatory sentences. (Slip op. at 4).

SUMMARY OF THE ARGUMENT

As admitted by the majority of the panel opinion in this case, the lower court's decision to allow the minimum mandatory firearm provision to be consecutively stacked on top of the habitual offender minimum mandatory sentences directly and expressly conflicts with the decisions in Davis v. State, 630 So.2d 595 (Fla. 2d DCA 1993) and Langley v. State, 614 So.2d 34 (Fla. 5th DCA 1993).

ARGUMENT

JURISDICTIONAL ISSUE: THE FLORIDA FIRST DISTRICT COURT OF APPEAL'S OPINION IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS ON THE SAME POINT OF LAW WITH THE DECISIONS IN DAVIS V. STATE, 630 SO.2D 595 (FLA. 2D DCA 1993), LANGLEY V. STATE, 614 SO.2D 34 (FLA. 5TH DCA 1993) AND THIS COURT'S DECISIONS IN PALMER V. STATE, 438 SO.2D 1 (FLA. 1983), HALE V. STATE, 630 SO.2D 521 (FLA. 1993), BROOKS V. STATE, 630 SO.2D 527 (FLA. 1993), AND DANIELS V. STATE, 595 SO.2D 952 (FLA. 1992).

The majority in this case admit that its decision to allow the consecutive stacking in the same criminal episode of the minimum mandatory firearm sentence on top of the habitual offender minimum mandatory sentences is contrary to the decisions in Davis v. State, 630 So.2d 595 (Fla. 2d DCA 1993), and Langley v. State, 614 So.2d 34 (Fla. 5th DCA 1993). (Slip op. at 4).

Furthermore, Judge Benton in his dissenting opinion also confirms that the majority decision is in conflict with Davis v. State, supra, and Langley v. State, supra (Slip op. at 6), as well with the opinions of this court's cited above in the issue statement.

CONCLUSION


Based on the foregoing arguments and authorities, this court should exercise its discretionary jurisdiction and resolve the conflict created by the Florida First District Court of Appeal's opinion in this case.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been forwarded by delivery to James W. Rogers, Assistant Attorney General, The Capitol, Plaza Level, Tallahassee, Florida, this 13th day of October, 1994.

Respectfully submitted,

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