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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

TYRONE STEPHAN JACKSON,

Petitioner,

v.

CASE NO. 84,475

THE STATE OF FLORIDA,

Respondent.

_____ /

ON PETITION FOR DISCRETIONARY REVIEW

JURISDICTIONAL BRIEF OF RESPONDENT

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THE STATE OF FLORIDA,

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JURISDICTIONAL BRIEF OF RESPONDENT

PRELIMINARY STATEMENT

This is a petition for discretionary review pursuant to Article V, Section 3(B)(3), Florida Constitution, based on a claim that the decision below expressly and directly conflicts with decisions of this Court or of other district courts of appeal.

Express and direct conflict must be based on the decisions themselves, not the opinions, and the only relevant facts are those within the four corners of the majority opinions. Reaves v. State, 485 So. 2d 829 (Fla. 1986).

STATEMENT OF THE CASE AND FACTS

Petitioner's statement of the case and facts are not drawn exclusively from the four corners of the decision below and must be rejected.

The historical facts as established by the September 8, 1994 Opinion of the First District Court of Appeal are as follows:

Tyrone Stephan Jackson challenges convictions and sentences arising out of a single criminal episode, an attempted armed robbery during which two accomplices were shot and killed by law enforcement officers. We find no reversible error in either of the felony murder convictions or in the conviction for attempted armed robbery, and affirm all three convictions. We also affirm the sentences on the felony murder convictions. We reverse the sentence imposed for attempted armed robbery, however, and remand for resentencing.

The trial court adjudged Jackson a habitual violent felony offender and imposed enhanced sentences under section 775.084, Florida Statutes, on all three convictions. In addition to authorizing a greater maximum sentence, the habitual violent felony offender statute authorizes a mandatory minimum sentence. §775.084(4)(b), Fla. Stat.

On the attempted armed robbery conviction, Jackson received a sentence of thirty years in prison, including a ten-year mandatory minimum during which he was ineligible for early release. The sentence on the armed robbery conviction was imposed to run consecutively to the sentences on the felony murder convictions, both concurrent terms of natural life, each with a mandatory minimum fifteen-year term. The trial court ordered that these mandatory minimum portions of all three sentences run concurrently. (The trial court's directive that the habitual offender minimum mandatory portion of the attempted robbery sentence run concurrent with the habitual offender minimum mandatory sentences for felony murder is inconsistent with the trial court's separate directive that the overall attempted robbery sentence run consecutive to the overall felony murder sentences.. However, our disposition herein resolves this inconsistency.) The trial court also imposed a three-year mandatory minimum term under section 775.087(2) for the use of a firearm during the commission of the attempted armed robbery. The three-year mandatory portion of the attempted armed robbery sentence was ordered to run consecutively to all other mandatory minimum terms.

SUMMARY OF ARGUMENT

Petitioner may not properly invoke the powers of discretionary review of this Court as he is unable to show express and direct conflict between this case and another case which is factually on all fours and which applies the same principle of law to yield different results.

ARGUMENT

STANDARD OF REVIEW

Pursuant to Article V, Section 3(b)(3) of the Florida Constitution and Fla. R. App. P. 9.030(2)(A)(iv), this Court may review a decision of a District Court of Appeal which expressly and directly conflicts with a decision of another district court or with a decision of the Supreme Court on the same question of law. In determining whether conflict jurisdiction exists, this Court is limited to the facts as set forth within the four corners of the opinion, Reaves v. State, 485 So. 2d 829 (Fla. 1986), and must look at the decisions involved rather than a conflict in the opinions. Niemann v. Niemann, 312 So. 2d 733 (Fla. 1975). Conflict jurisdiction exists only in those instances in which the same principle of law is applied to identical facts to reach different results. Wilson v. Southern Bell Telephone and Telegraph, 327 So. 2d 220 (Fla. 1976).

ISSUE I

THE DECISION OF THE LOWER COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE CASES RELIED UPON BY THE PETITIONER.

The Petitioner contends that he is entitled to invoke the discretionary review of this Court based upon alleged direct and express conflicts between the First District Court's decision in this case and decisions of its sister courts in Davis v. State, 630 So. 2d 595 (Fla. 2d DCA 1993) and Longley v. State, 614 So. 2d 34 (Fla. 5th DCA 1993) and decisions of this Court 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). A review of these decisions reveals, however, that conflict does not result from the application of the same rule of law to the same facts to yield different results.

The petitioner correctly points out that the First District Court, in its majority opinion, conceded that its ruling on the issue of consecutive imposition of minimum mandatory sentences for use of a firearm to habitual minimum mandatory sentences, is contrary to the decisions of Davis v. State, supra., and Longley v. State. These opinions then would justify an exercise of this Court's powers of discretionary review.

Although Daniels precludes the stacking of firearm minimum mandatory sentences within a single criminal episode, neither precludes a habitual offender minimum mandatory followed by a firearm minimum mandatory within a single criminal

episode. The legislature addressed separate harms in enacting the habitual offender minimum mandatory sentence statute and the firearm minimum mandatory sentence statute. The first addressed the problem of repeat violent offenders while the second addressed the problem of firearm possession in connection with commission of certain enumerated offenses. The language of these separate enhancement statutes gives no suggestion that the legislature intended section 775.087(2) to have no meaningful effect in the context of a criminal episode for which a habitual offender minimum mandatory sentence is imposed. Accordingly, we decline to direct that the firearm minimum mandatory sentence must run concurrent with the habitual offender minimum mandatory sentences. We acknowledge, however, that 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), are to the contrary on this point. (Slip Op. at page 4).

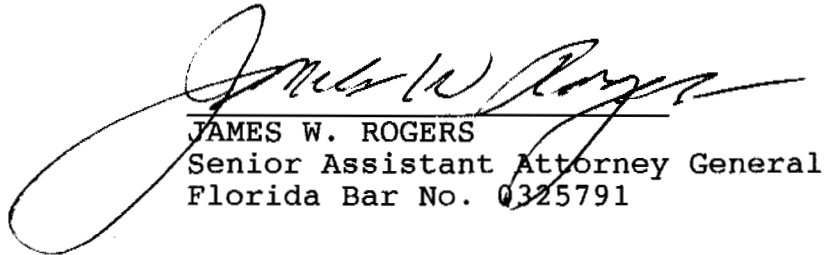
The Petitioner, however, improperly seeks to expand the appearance of conflict to cases cited to include the dissenting opinion of Judge Benton. Conflict cannot be shown from a dissent. Reaves v. State, 485 So. 2d 829 (Fla. 1986); Jenkins v. State, 385 So. 2d 1359 (Fla. 1980).

CONCLUSION


Based upon the foregoing argument, the Respondent would respectfully assert that if conflict exists, it is limited to those cases of acknowledged conflict set forth in the majority opinion.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to David P. Gauldin, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 3/07 day of October, 1994.

Giselle Lyle Rivera

GISELLE LYLEN RIVERA
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

TYRONE STEPHAN JACKSON,

Petitioner,

v.

CASE NO. 84, 475

THE STATE OF FLORIDA,

Respondent.

_____ /

APPENDIX TO

JURISDICTIONAL BRIEF OF RESPONDENT

DOCUMENT

Opinion, Jackson v. State,
No. 93-1479
(Fla. 1st DCA, September 8, 1994)

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

TYRONE STEPHAN JACKSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE
MOTION FOR REHEARING AND DISPOSITION
THEREOF IF FILED

CASE NO. 93-1479

Handwritten: 93-1479
Stamp: Clerk of Court
District Court of Appeal
First District
Tallahassee, Florida

Opinion filed September 8, 1994.

An appeal from the Circuit Court for Duval County.
Alban Brooke, Judge.

Handwritten: 92-9178-EF

Nancy A. Daniels, Public Defender, and David P. Gauldin, Assistant
Public Defender, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General, and Giselle Lylen Rivera,
Assistant Attorney General, Tallahassee, for Appellee.

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9-12-94
Filed Attorney
General *RB*

PER CURIAM.

Tyrone Stephan Jackson challenges convictions and sentences arising out of a single criminal episode, an attempted armed robbery during which two accomplices were shot and killed by law enforcement officers. We find no reversible error in either of the felony murder convictions or in the conviction for attempted armed

robbery, and affirm all three convictions. We also affirm the sentences on the felony murder convictions. We reverse the sentence imposed for attempted armed robbery, however, and remand for resentencing.

The trial court adjudged Jackson a habitual violent felony offender and imposed enhanced sentences under section 775.084, Florida Statutes, on all three convictions. In addition to authorizing a greater maximum sentence, the habitual violent felony offender statute authorizes a mandatory minimum sentence. §775.084(4)(b), Fla. Stat.

On the attempted armed robbery conviction, Jackson received a sentence of thirty years in prison, including a ten-year mandatory minimum term during which he was ineligible for early release. The sentence on the armed robbery conviction was imposed to run consecutively to the sentences on the felony murder convictions, both concurrent terms of natural life, each with a mandatory minimum fifteen-year term. The trial court ordered that these mandatory minimum portions of all three sentences run concurrently. (The trial court's directive that the habitual offender minimum mandatory portion of the attempted robbery sentence run concurrent with the habitual offender minimum mandatory sentences for felony murder is inconsistent with the trial court's separate directive that the overall attempted robbery sentence run consecutive to the overall felony murder sentences. However, our disposition herein resolves this inconsistency.) The trial court also imposed a

three-year mandatory minimum term under section 775.087(2) for the use of a firearm during the commission of the attempted armed robbery. The three-year mandatory portion of the attempted armed robbery sentence was ordered to run consecutively to all other mandatory minimum terms.

In Hale v. State, 630 So. 2d 521 (Fla. 1993), the court ruled that, although the sentences for multiple crimes committed during a single criminal episode may each be enhanced under section 775.084(1)(a) and (b) and section 775.087(2), the legislature has not authorized further increasing the penalties by allowing the sentences to run consecutively. Hale, 630 So. 2d at 524; Brooks v. State, 630 So. 2d 527 (Fla. 1993). In the instant case, the sentence for attempted armed robbery was imposed to run consecutively to the sentences on the felony murders. On remand, the attempted armed robbery sentence must be made to run concurrently with the felony murder sentences because all three involved habitual offender penalties.

Where a defendant receives multiple habitual violent felony offender sentences, moreover, the mandatory minimum terms as well as the sentences of which they are a part must be imposed to run concurrently, when imposed for crimes arising out of a single episode. Daniels v. State, 595 So. 2d 952 (Fla. 1992). In the instant case, the mandatory minimum terms imposed under the habitual violent felony offender statute on all three convictions were properly ordered to run concurrently.

Jackson argues that Daniels also requires that the three-year minimum mandatory term under section 775.087(2) must run concurrent with the habitual offender minimum mandatory sentences. We do not agree. Although Daniels precludes the stacking of habitual offender minimum mandatory sentences within a single criminal episode and Palmer v. State, 438 So. 2d 1 (Fla. 1983), precludes the stacking of firearm minimum mandatory sentences within a single criminal episode, neither precludes a habitual offender minimum mandatory followed by a firearm minimum mandatory within a single criminal episode. The legislature addressed separate harms in enacting the habitual offender minimum mandatory sentence statute and the firearm minimum mandatory sentence statute. The first addressed the problem of repeat violent offenders while the second addressed the problem of firearm possession in connection with commission of certain enumerated offenses. The language of these separate enhancement statutes gives no suggestion that the legislature intended section 775.087(2) to have no meaningful effect in the context of a criminal episode for which a habitual offender minimum mandatory sentence is imposed. Accordingly, we decline to direct that the firearm minimum mandatory sentence must run concurrent with the habitual offender minimum mandatory sentences. We acknowledge, however, that 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), are to the contrary on this point.

We vacate the sentence for attempted armed robbery and remand for resentencing. The convictions and sentences are otherwise affirmed.

ALLEN and BOOTH, JJ., CONCUR; BENTON, J. CONCURS AND DISSENTS WITH WRITTEN OPINION.

BENTON, J., concurring and dissenting.

Citing not one decision in support of its conclusion that minimum mandatory sentences may be made to run consecutively where such sentences address "separate harms," the majority "acknowledge[s] . . . that 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), are to the contrary." Ante, p. . So are Hale, Brooks, Daniels and Palmer, all of which involved not only separate harms, but also separate crimes.

Because Jackson's offenses occurred as part of a single criminal episode, I concur with the majority that the sentences must run concurrently, Brooks; Hale; that the minimum mandatory sentences for the use of a firearm must run concurrently, Palmer; and that the minimum mandatory sentences authorized by the habitual offender statute must run concurrently, Daniels; I would follow Davis and Langley.