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IN THE SUPREME COURT OF FLORIDA

RICKY J. GOODLOE,)
)
 Petitioner.)
)
 versus)
)
 STATE OF FLORIDA,)
)
 Respondent.)
)
 _____)

S.CT CASE NO. 85,535

DCA CASE NO. 94-1738

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Petitioner, Rickey Goodloe, was charged with three misdemeanor traffic offenses. In a separate case, Petitioner was charged with a felony based upon the same episode which gave rise to the traffic charges. Over defense objections, the cases were tried together. Petitioner was acquitted of the felony and convicted of the three misdemeanors.

Petitioner was sentenced to three consecutive terms in county jail, totaling two and one half years. Petitioner appealed the joinder and sentences to the Fifth District Court of Appeal. The District Court affirmed Appellant's convictions and sentences, relying on its own decision in Armstrong v. State, 640 So.2d 1250 (Fla. 5th.DCA 1994). The court did acknowledge that its ruling on consecutive county jail sentences for misdemeanors was in conflict with McGauley v. State, 632 So.2d 1154 (Fla. 4th.DCA 1994).

SUMMARY OF THE ARGUMENT

Petitioner asks this Court to reconsider its recent decision in Armstrong v. State, 20 Fla. L. Weekly S235 (Fla. May 18, 1995), and hold that consecutive county jail sentences are illegal for both misdemeanors and felonies. Singleton v. State, 554 So.2d 1162 (Fla. 1990) made no distinction between felonies and misdemeanors, while holding that consecutive terms in county jail were improper.

POINT

THE DISTRICT COURT ERRED BY
AFFIRMING PETITIONER'S CONSECUTIVE
COUNTY JAIL SENTENCES.

In the District Court, Petitioner urged that this Court's decision in Singleton v. State, 554 So.2d 1152 (Fla. 1990), be interpreted as the Fourth DCA did in McGauley v. State, 632 So.2d 1154 (Fla. 4th.DCA 1994), and not as the Fifth DCA did in Armstrong v. State, 640 So.2d 1250 (Fla. 5th.DCA 1994). McGauley held that Consecutive county jail sentences were always improper for crimes arising out of the same incident, while Armstrong held that consecutive county jail sentences for misdemeanors are permissible.

One month prior to accepting jurisdiction in this case, this Court decided Armstrong v. State, 20 Fla. L. Weekly S235 (Fla. May 18, 1995). This Court resolved the conflict between the Fifth and Fourth District Court's in favor of the Fifth, holding that Singleton applied only to felony cases, since it was a guidelines case. This Court specifically disapproved McGauley.

Petitioner can only ask this Court to reconsider its decision in Armstrong. Singleton made no distinction between felonies and misdemeanors in holding that consecutive periods in county jail are illegal when arising from a single criminal episode. Also, as this Court acknowledged in Armstrong, it is now possible for a misdemeanant to receive several years in jail while a felon may be sentenced to only one year.

Petitioner asks this Court to reconsider its holding in Armstrong, and find that consecutive county jail sentences are illegal regardless of whether a defendant is being sentenced for felonies or misdemeanors.

CONCLUSION

BASED UPON the argument and authorities expressed herein, Petitioner respectfully requests that this Honorable Court reverse the holding of the Fifth District Court of Appeal and remand this cause for resentencing.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert E. Butterworth, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, in his basket at the Fifth District Court of Appeal; and mailed to Ricky J. Goodloe, Post Office Box 585031, Orlando, Florida 32858, on this 18th day of July, 1995.

Kenneth Witts

KENNETH WITTS
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

RICKY J. GOODLOE,)	
)	
Petitioner.)	
)	
versus)	S.CT CASE NO. 85,535
)	
STATE OF FLORIDA,)	DCA CASE NO. 94-1738
)	
Respondent.)	
_____)	

A P P E N D I X

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 1995

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KW

RICKY J. GOODLOE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL THE TIME EXPIRES
TO FILE REHEARING MOTION, AND,
IF FILED, DISPOSED OF.

Case No. 94-1738 ✓

Opinion filed April 7, 1995 ✓

Appeal from the Circuit Court
for Orange County,
Richard F. Conrad, Judge.

James B. Gibson, Public Defender, and
Kenneth Witts, Assistant Public Defender,
Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Mark S. Dunn, Assistant
Attorney General, Daytona Beach, for Appellee.

GOSHORN, J.

Ricky Goodloe appeals from the judgments and sentences entered for three misdemeanors arising from a high speed chase. We find his contention that the trial court abused its discretion by consolidating the misdemeanors with a related felony charge to be without merit because all charges arose from a single criminal episode. See Fla. R. Crim. P. 3.150(a).

Goodloe's assertion that the trial court erred by sentencing him to consecutive terms

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7th CIR. APP. DIV.

in the county jail for the misdemeanor offenses is also without merit. Our decision is controlled by this court's opinion in Armstrong v. State, 640 So. 2d 1250 (Fla. 5th DCA 1994), review granted, No. 84,283 (Fla. Dec. 19, 1994). As we did in Armstrong, we acknowledge conflict with McGauley v. State, 632 So. 2d 1154 (Fla. 4th DCA 1994).

AFFIRMED.

DAUKSCH and COBB, JJ., concur.