

**FILED**

SID J. WHITE

JUN 26 1995

CLERK, SUPREME COURT  
By [Signature]  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 85,548

STATE OF FLORIDA,

Petitioner,

vs.

JOHN WILLIAM PARKER,

Respondent.

\*\*\*\*\*

ON PETITION FOR DISCRETIONARY REVIEW FROM THE  
DISTRICT COURT OF APPEAL, THIRD DISTRICT

\*\*\*\*\*

PETITIONER'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH  
Attorney General  
Tallahassee, Florida

DOUGLAS J. GLAID  
Assistant Attorney General  
Florida Bar #249475  
4000 Hollywood Blvd., Ste. 505  
Hollywood, Florida 33021  
Telephone: (305) 985-4482

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF CITATIONS.....ii  
INTRODUCTION .....1  
STATEMENT OF THE CASE AND FACTS.....2-3  
SUMMARY OF THE ARGUMENT.....4  
ARGUMENT.....5

POINT ON APPEAL

HALE v. STATE, 630 So. 2d 521 (Fla. 1993),  
cert. denied, \_\_\_ U.S. \_\_\_, 115 S.Ct. 278,  
130 L.Ed.2d \_\_\_ 195 (1994) SHOULD BE  
INTERPRETED TO ONLY PROHIBIT THE IMPOSITION  
OF CONSECUTIVE MINIMUM MANDATORY SENTENCES  
FOR EACH OFFENSE COMMITTED DURING THE  
COURSE OF A SINGLE CRIMINAL EPISODE UNDER  
§775.084, FLORIDA STATUTES.

CONCLUSION.....6  
CERTIFICATE OF SERVICE.....6

TABLE OF CITATIONS

CASES

PAGE

Hale v. State, 630 So. 2d 521 (Fla. 1993), cert. denied,  
\_\_\_ U.S. \_\_\_, 115 S.Ct. 278, 130 L.Ed.2d 195 (1994)..2, 4-5

Hill v. State,  
645 So. 2d 90 (Fla. 3d DCA 1994),  
rev. pending, Case No. 4,727 (Fla. Nov. 23, 1994).....2, 5

OTHER AUTHORITIES

§775.084, Fla. Stat.....4-5

PRELIMINARY STATEMENT

The Petitioner, the State of Florida, was the appellee in the Third District Court of Appeal and the prosecution in the trial court of the Eleventh Judicial Circuit, in and for Dade County. The Respondent was the appellant and the defendant, respectively in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "R" refers to the record transmitted to this Court by the Clerk of the Third District Court of Appeal on June 21, 1995.

Unless otherwise indicated, all emphasis has been supplied by Petitioner.

STATEMENT OF THE CASE AND FACTS

After a jury trial, Respondent was convicted of fraudulent use of a credit card (count 1) and grand theft (count 2). Respondent was sentenced as a habitual felony offender to consecutive terms of 10 years incarceration. (R 54-56). Under the sentencing guidelines, Respondent's recommended guidelines sentence range was 17 to 22 years imprisonment with a permissive range of 12 to 27 years imprisonment. (R 57).

Respondent appealed to the Third District Court of Appeal, alleging, inter alia, that it was error for the trial court to sentence him to consecutive habitual offender sentences since his crimes arose from the same criminal incident. The District Court affirmed Respondent's conviction but reversed and vacated Respondent's sentence, citing in its opinion this Court's decision in Hale v. State, 630 So. 2d 521 (Fla. 1993). (R 64-65). In its opinion, the Third District certified the same question it framed in Hill v. State, 645 So. 2d 90 (Fla. 3d DCA 1994), to this Court, to-wit:

Whether Hale v. State, 630 So. 2d 521 (Fla. 1993), cert. denied, \_\_\_ U.S. \_\_\_, 115 S.Ct. 278, 130 L.Ed.2d 195 (1994), precludes under all circumstances the imposition of consecutive sentences for crimes arising from a single criminal episode for habitual felony or habitual violent felony offenders?

Respondent filed a motion for rehearing which was denied by the Third District on March 29, 1995. The Petitioner

thereafter timely filed its notice to invoke this Court's discretionary jurisdiction to review this cause. On April 21, 1995, this Court entered an order postponing decision on jurisdiction and set a briefing schedule. This brief on the merits followed.

SUMMARY OF ARGUMENT

This Court's decision in Hale v. State, 630 So. 2d 521 (Fla. 1993), cert. denied, \_\_\_ U.S. \_\_\_, 115 S.Ct. 278, 130 L.Ed.2d 195 (1994) should be interpreted to only prohibit the imposition of consecutive minimum mandatory sentences for each offense committed during the course of a single criminal episode under §775.084, Florida Statutes.

ARGUMENT

HALE v. STATE, 630 So. 2d 521 (Fla. 1993), cert. denied, \_\_\_ U.S. \_\_\_, 115 S.Ct. 278, 130 L.Ed.2d 195 (1994) SHOULD BE INTERPRETED TO ONLY PROHIBIT THE IMPOSITION OF CONSECUTIVE MINIMUM MANDATORY SENTENCES FOR EACH OFFENSE COMMITTED DURING THE COURSE OF A SINGLE CRIMINAL EPISODE UNDER §775.084, FLORIDA STATUTES.

The issue involved here has previously been briefed in State v. Hill, Case No. 84,727. The Petitioner, the State of Florida, adopts and reiterates all of the arguments raised in its initial and reply briefs filed in that case as if they were fully set forth herein. The State asks this Court to take judicial notice of its file in that case and refer to the arguments contained in the briefs filed therein. The State reserves the right to respond to any argument raised by Respondent in his answer brief.<sup>1</sup>

As argued in Hill, Petitioner requests this Court to limit the rule enunciated in Hale to minimum mandatory portions of habitual felony offender sentences, the particular facts of the case, or alternatively, to carve out an exception to the Hale rule which would require that habitual offender sentences be imposed consecutively where they would otherwise fall below the guidelines range applicable in the absence of a habitual offender sentence.

---

<sup>1</sup> The State will furnish counsel for Respondent with copies of its briefs filed in Hill.

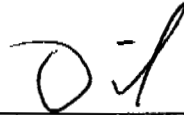


**CONCLUSION**

Wherefore, based upon the foregoing argument and authorities cited herein, Appellee respectfully requests that this Honorable Court ACCEPT discretionary jurisdiction in this cause, answer the certified question in the negative, and reinstate the trial court's sentence.

Respectfully submitted,

**ROBERT A. BUTTERWORTH**  
Attorney General  
Tallahassee, Florida



---

**DOUGLAS J. GLAID**  
Assistant Attorney General  
Bar #249475  
4000 Hollywood Blvd., Ste. 505  
Hollywood, Florida 33021  
(305) 985-4482

Counsel for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Brief on the Merits has been furnished by U.S. Mail to: Rosa C. Figarola, Assistant Public Defender, Counsel for Respondent, 1320 N.W. 14th Street, Miami, Florida 33125, this 21st day of June, 1995.



---

**DOUGLAS J. GLAID**  
Assistant Attorney General