IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 85,921

ROY PHANEUF,

Respondent.
_____/

ON DISCRETIONARY REVIEW OF THE
DISTRICT COURT OF APPEAL,
FIFTH DISTRICT

REPLY BRIEF OF PETITIONER

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

BONNIE JEAN PARRISH
ASSISTANT ATTORNEY GENERAL
Fla. Bar #768870
444 Seabreeze Boulevard
5th Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

SUMMARY OF ARGUMENT

The instant case is identical to State v. Blackwell, infra, and those cases consolidated with Blackwell. Respondent concedes that Blackwell controls. Any issue concerning the filing of written notice by the trial judge after the plea was accepted is a none issue. As this court determined in Blackwell, the plea agreement itself gave respondent notice that he could be sentenced as a habitual offender.

ARGUMENT

POINT ON APPEAL

THE FIFTH DISTRICT COURT OF APPEAL ERRED IN FINDING THAT THE RESPONDENT HAD NOT BEEN GIVEN NOTICE OF THE INTENT TO HABITUALIZE PRIOR TO RESPONDENT ENTERING HIS PLEA; THE PLEA FORM THE RESPONDENT SIGNED, READ AND UNDERSTOOD GAVE THE RESPONDENT SUFFICIENT NOTICE, AS IT SET FORTH THE MAXIMUM SENTENCE THAT COULD BE IMPOSED IF THE RESPONDENT WAS HABITUALIZED AND THAT THE RESPONDENT WOULD NOT BE ENTITLED TO BASIC GAIN TIME.

Respondent concedes that the instant case is controlled by State v. Blackwell, 20 Fla. L. Weekly S354 (Fla. July 20, 1995). The Fifth District's decision in Phaneuf v. State, 655 So. 2d 1300 (Fla. 1995), should be quashed.

After conceding, respondent goes on to argue that he was improperly sentenced as a habitual offender based on the trial judge's issuance of a notice which was not filed until after the entry of respondent's plea. In making such an argument, respondent fails to recognize or acknowledge that the necessary notice was provided in the plea agreement, as this court determined in Blackwell, supra. Respondent knew when he entered his plea that he could be habitualized. The filing of the notice by the trial judge in no way affected or diminished the notice already received in the plea agreement. Respondent has in effect raised a none issue.[1]

---

[1]Petitioner asserts that this court has approved the filing of a notice by a trial judge. In Toliver v. State, 605 So. 2d 477 (Fla. 5th DCA 1992), rev. denied, 618 So. 2d 212 (Fla. 1993), the Fifth District held that the trial judge is obligated to declare a defendant to be a habitual offender when he qualifies for such classification. This court denied review of Toliver. Also, in King v. State, 557 So. 2d 899, 903 (Fla. 5th DCA), rev. denied, 564 So. 2d 1086 (Fla. 1990), this court stated "it is clear that either

CONCLUSION

Based on the arguments and authorities presented herein and this court's decision in Blackwell, petitioner requests this court quash the decision in the instant case.

Respectfully submitted,

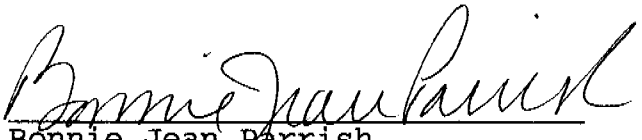
ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

BONNIE JEAN PARRISH
ASSISTANT ATTORNEY GENERAL
Fla. Bar #768870
444 Seabreeze Boulevard
5th Floor
Daytona Beach, FL 32118

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Reply Brief of Petitioner has been furnished by delivery to Brynn Newton, Assistant Public Defender, 112-A Orange Avenue, Daytona Beach, Florida 32114, this 9th day of October, 1995.



Bonnie Jean Parrish
Of Counsel

---

the state or the court may suggest the [habitual offender] classification. There is nothing in the statute to suggest that the legislature intended otherwise." Finally, this court rejected this identical claim in Blackwell.