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IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

MAR 14 1996

TAURANCE YOUNG,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

CASE NO. 87,099

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

PETITIONER'S REPLY BRIEF

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

✓
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§ 775,08401 Fla. Stat. (1995)

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ARGUMENT
POINT ONE

THE DECISION OF THE DISTRICT COURT TO PERMIT THE TRIAL COURT TO ENHANCE PETITIONER'S SENTENCE BY ADDING SPECIAL CONDITIONS OF PROBATION AFTER REMAND IS INCORRECT BECAUSE THE SENTENCE WAS FINAL AND ENHANCING THE SENTENCE EXPOSES PETITIONER TO DOUBLE JEOPARDY

Respondent argues that a trial judge may legally add special conditions of probation after the sentencing hearing but before the court's filing of the written order if the court brings the defendant back before the court and gives him the opportunity to object to the proposed conditions. While this is an interesting argument, that issue is not the primary issue to be decided in this case. The issue to be decided is whether a trial court can impose additional special conditions of probation on remand after an appellate court finds the trial court failed to orally pronounce those conditions at the sentencing hearing.

Even if Respondent is correct that a trial court may properly impose additional special conditions of probation after the sentencing hearing but before the rendering of the written order if the defendant is given the opportunity to object to the proposed conditions, once the court reduces the sentence to a written order, undoubtedly the order is final. Respondent's argument that the trial court can impose the conditions on remand ignores any notion of finality. In Pope v. State, 561 So. 2d 554,556 (Fla. 1991), this Court held that when an appellate court reverses a departure sentence because there were no written reasons given for departure, the court must remand for resentencing with no possibility of

departure from the guidelines. The rationale as stated by the Court included the need to avoid multiple appeals and multiple resentencings. Id. This same rationale should be applicable to Petitioner's case. By allowing the trial court to get a second chance at imposing the special conditions of probation struck down by the appellate court, the door is opened for multiple appeals and multiple resentencings.

POINT TWO

THE DECISION OF THE DISTRICT COURT WAS INCORRECT BECAUSE THE HABITUAL OFFENDER PROCEEDINGS WERE INITIATED BY THE TRIAL COURT ON ITS OWN MOTION, CONTRARY TO THE INTENT OF THE LEGISLATURE

Respondent argues in part that by enacting section 775.08401, Florida Statutes, the legislature intended to make it possible to prosecute more convicted defendants as habitual offenders. (See Respondent's Brief at p.10-11) Respondent argues Petitioner's argued interpretation of the statute is inconsistent with Respondent's interpretation.

Nothing in the language of section 775.08401 indicates that, by enacting the statute, the legislature intended to increase the number of persons sentenced as habitual offenders. The obvious intent of the statute is to "ensure a fair and impartial application of the habitual offender statute." § 775.08401 Fla. Stat. (1993) Petitioner submits that an intent to increase the number of persons sentenced as habitual offenders is not the same as, or congruent with, the fair and impartial application of the statute. Had the legislature intended to increase the number of persons sentenced as habitual offenders, it simply would have changed the statutory criteria such that more persons would be eligible to be so sentenced. Respondent's interpretation of the statute that the statute limits the discretion of the state attorney to not bring habitual offender proceedings by requiring criteria and an explanation when the state attorney does not

habitualize is incorrect. The statute clearly reads that the state attorney must provide a written reason when the state attorney does not follow the established criteria. The statute does not read, as Respondent asserts, that the written explanation must be made only when the state attorney chooses not to habitualize.


The legislature, by enacting section 775.08401, has mandated the State Attorney's offices to establish uniform criteria to ensure that the State Attorney's offices fairly and impartially select persons to prosecute as habitual offenders. What is the point of such a requirement if the prosecution's mandated criteria can be circumvented simply by the trial court initiating the proceeding on its own? The goal of the statute is to ensure the fair and impartial application of the habitual offender statute. This goal is severely hampered if a trial judge can initiate the proceedings and ignore the uniform criteria set up to ensure the fair and impartial application of the habitual offender statute.

CONCLUSION

For the reasons stated above, Petitioner requests this Honorable Court to reverse the decision of the District Court of Appeal and to remand this case to the trial court for resentencing under the sentencing guidelines and with orders to strike the unannounced special conditions of probation.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to: The Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, FL 32118 via his basket at the Fifth District Court of Appeal and mailed to: Mr. Taurence Young, DOC #589567, Madison C. I., P. O. Box 692, Madison, FL 32340-0692, on this 11th day of March, 1996.


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