IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner/Cross-respondent,

v.

ANTONIO L. CRAFT,

Respondent/Cross-petitioner.

CASE NO. 87,545

PETITIONER/CROSS-RESPONDENT'S INITIAL BRIEF ON THE MERITS

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TABLE OF CITATIONS

CASES-Continued PAGE(S)

CASES-Continued PAGE(S)

CONSTITUTIONS AND STATUTES (1993)

OTHER

PRELIMINARY STATEMENT

Petitioner, the State of Florida, the prosecution and Appellee below, will be referred to as "the State." Respondent, Antonio Lee Craft, the defendant and Appellant below, will be referred to as "Respondent." The record on appeal will be referred to by the symbol "R," followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review the instant case pursuant to article V, section 3(b)(4) of the Florida Constitution.

STATEMENT OF THE CASE AND FACTS

On January 18, 1995, Respondent was adjudiciated guilty and sentenced on convictions for first degree murder, and possession of a concealed firearm. (R 337-40). On February 1, 1995, Respondent was also adjudicated guilty and sentenced for possession of a firearm by convicted felon. (R 373-77). Respondent appealed, among other things, his convictions and sentences for carrying a concealed firearm and possession of a firearm by a convicted felon based on double jeopardy grounds. (Respondent's initial brief below at 43-45). The State argued, with respect to his convictions, that Respondent waived this issue because he failed to

raise the issue of multiple convictions based on one firearm before the trial court, although he could raise the issue of multiple sentences for the first time on appeal. (State's answer brief below (SAB) at 24). In addition, the State argued, with respect to both his convictions and sentences, that they were not barred by double jeopardy because of the Florida legislature's clear intent to allow multiple convictions and punishments based on one act, and because of a successful application of the Blockburger test. (SAB 24-31). The First District, without discussing the State's preservation argument, vacated the conviction for carrying a concealed firearm based on its recent decision in Brown v. State, 21 Fla. L. Weekly D10 (Fla. 1st DCA Dec. 18, 1995). Craft v. State, 21 Fla. L. Weekly D593 (Fla. 1st DCA Mar. 5, 1996). In Brown, supra, the First District vacated two of three firearm convictions based on double jeopardy grounds, pursuant to A.J.H. v. State, infra, and State v. Stearns, infra. However, the court certified the following question:

> WHEN A DEFENDANT COMMITS SEPARATE OFFENSES DURING THE SAME CRIMINAL EPISODE, EACH INVOLVING A FIREARM, BUT EACH HAVING SEPARATE AND DISTINCT ELEMENTS, MAY THE DEFENDANT BE CONVICTED AND SENTENCED FOR EACH CRIME?

SUMMARY OF ARGUMENT

Respondent failed to preserve the issue of multiple firearm convictions; thus, his vacated conviction must be reinstated. Respondent's two convictions and sentences based on his possession of one firearm did not violate double jeopardy because the legislature clearly specified its intent that multiple convictions may arise out of one act. The convictions are also valid because the statutory requirements of each offense includes a unique element. Finally, this Court's decisions in State v. Brown, infra, and State v. Stearns, infra, are not dispositive of the instant case. Accordingly, Respondent's double jeopardy protections were not violated; thus, the conviction and sentence reversed by the district court must be reinstated.

ARGUMENT

ISSUE

WHEN A DEFENDANT COMMITS SEPARATE OFFENSES DURING THE SAME CRIMINAL EPISODE, EACH INVOLVING A FIREARM, BUT EACH HAVING SEPARATE AND DISTINCT ELEMENTS, MAY THE DEFENDANT BE CONVICTED AND SENTENCED FOR EACH CRIME?

Respondent failed to preserve the issue of multiple firearm convictions; thus, his vacated conviction must be reinstated. Respondent's two convictions and sentences based on his possession of one firearm did not violate double jeopardy because the legislature clearly specified its intent that multiple convictions may arise out of one act. The convictions are also valid because the statutory requirements of each offense includes a unique element. Finally, this Court's decisions in State v. Brown, infra, and State v. Stearns, infra, are not dispositive of the instant case. Accordingly, Respondent's double jeopardy protections were not violated; thus, the conviction and sentence reversed by the district court must be reinstated.

Respondent waived the issue of multiple convictions arising out of his possession of one firearm because he did not advance arguments thereon to the trial court, although the legality of multiple sentences may be raised for the first time on appeal.

Perrin v. State, 599 So. 2d 1365 (Fla. 1st DCA 1992); see (SAB 24)[1]. Because Respondent failed to raise this issue before the trial court, it was improperly before the First District, and now this Court. Accordingly, the First District should not have reached this issue with respect to Respondent's convictions; thus, his conviction for carrying a concealed firearm should not have been vacated. Thus, this Court must reinstate Respondent's vacated conviction for lack of preservation.

Even if this Court reviews the merits of this case, this Court will find that Respondent's convictions and sentences did not violate double jeopardy. This double jeopardy issue requires a determination of law. Thus, the standard of review is de novo. Philip J. Padovano, Florida Appellate Practice § 5.4B, at 32 (1994 Supp.).

1. The Florida Legislature clearly intends that cumulative convictions and sentences may be imposed based on one act; thus, Respondent's cumulative convictions and sentences did not violate double jeopardy.

Clearly specified legislative intent controls the determination of whether a single act may result in multiple convictions without

[1] Respondent did not contest the State's preservation argument in its Reply Brief below. (Reply Brief 13).

violating double jeopardy. Ohio v. Johnson, 467 U.S. 493, 499, 104 S. Ct. 2536, 2541, 81 L. Ed. 2d 425 (1984); State v. Smith, 547 So. 2d 613, 616 (Fla. 1989). In Missouri v. Hunter, 459 U.S. 359, 103 S. Ct. 673, 74 L. Ed. 2d (1983), the United States Supreme Court held that when a legislature specifically authorizes cumulative punishments under two statutes for the same act, the trial court may impose cumulative punishments. Id. at 368-369. Cumulative punishments, based on legislative intent, do not violate double jeopardy even if the offenses fail the Blockburger[2] test. United States v. Moore, 43 F. 3d 568, 573 (11th Cir. 1995). E.g., United States v. Johnson, 32 F. 3d 82 (4th Cir. 1994)(convictions for carjacking with firearm and use or carrying of firearm during violent crime do not violate double jeopardy because of clear legislative intent, despite Blockburger failure); United States v. Singeton, 16 F. 3d 1419 (5th Cir. 1994)(same); United States v. Sabini, 842 F. Supp. 1448 (S.D. Fla. 1994), affirmed, 48 F. 3d 536 (11th Cir. 1995)(Table). Adherence to legislative intent is based on the separation of powers doctrine, upon which this Court demands

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[2] Blockburger v. United States, 284 U.S. 299, 304, 52 S. Ct. 180, 182, 76 L. Ed. 306 (1932) (holding that to determine whether one act can result in multiple convictions, the offense statutes must be compared to determine "whether each [statute] requires proof of an additional fact which the other does not.").

unequivocal adherence. B.H. v. State, 645 So. 2d 987, 991 (Fla. 1994) (stating "without exception[,] . . . Florida's Constitution absolutely requires a 'strict' separation of powers"). Judges should only determine whether laws satisfy constitutional limits, and should not substitute their personal beliefs for the judgment of legislators, who are elected to pass laws. Kahn v. Shevin, 416 U.S. 351, 356 n.10, 94 S. Ct. 1734, 1737 n.10, 40 L. Ed. 2d 189 (1974); Sirmons v. State, 634 So. 2d 153, 156 (Fla. 1994)("This Court's obligation is to apply the statute as it is written.")(Grimes, J., dissenting). Thus, this Court must determine whether the Florida legislature specified its intent that multiple firearm convictions may arise out of one act of possession.

Applying the above rules of law to the facts in the instant case, it is clear that Respondent's multiple firearm convictions and sentences did not violate double jeopardy. The Florida Statutes clearly provide that "[w]hoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense . . . ." § 775.021(4)(a), Fla. Stat. (1993). The statutes also provide that "[t]he intent of the Legislature is to

convict and sentence for each criminal offense committed in the course of one criminal episode or transaction and not to [apply] the [rule] of lenity . . . ." § 775.021(4)(b), Fla. Stat. (1993). This Court cannot substitute its beliefs for the legislative intent clearly specified in section 775.021. Accordingly, the legislature clearly specified its intent that Respondent may be convicted of each offense based on one act, without violating double jeopardy. Smith, supra at 616. Thus, Respondent's convictions did not violate double jeopardy.

2. Respondent's cumulative convictions and sentences satisfied Blockburger; thus, they did not violate double jeopardy.

This Court held that "offenses are separate, allowing for conviction and punishment for each, if a comparison of the statutory elements, without regard to the facts . . ., reveals that each offense requires proof of an element that the other does not[,]" where the legislature has not clearly specified its intent to allow multiple convictions based on one act. State v. Henriquez, 485 So. 2d 414, 415-16 (Fla. 1986); Smith, supra at 616; see § 775.021(4)(a), Fla. Stat. (1993)("offenses are separate if each offense requires proof of an element that the other does not . . . .")(codification of Blockburger, supra, as exception to

general rule). Satisfaction of the above test shows that the legislature clearly intended separate convictions and punishments. Henriquez, supra at 416. This test is satisfied despite any overlap in elements between the offenses. Moore, 43 F. 3d at 571; see, e.g., Skeens v. State, 556 So. 2d 1113-14 (Fla. 1990)(holding that convictions for carrying concealed firearm and possession of firearm by felon, arising out of same act, did not violate double jeopardy because each had unique element). Thus, this Court must determine, in the absence of clearly stated legislative intent, whether the Blockburger test allows multiple firearm convictions and sentences based on possession of one firearm.

Turning to the facts in the instant case, it is clear that the trial court properly adjudicated Respondent guilty and sentenced him based on the two offenses because each offense contains a unique element. The offenses are: carrying a concealed firearm, § 790.01(2), Fla. Stat. (1993)("whoever shall carry a concealed firearm on or about his person shall be guilty of a felony of the third degree . . . ."), and possession of a firearm by a convicted felon, § 790.23, Fla. Stat. (1993)("It is unlawful for any person who has been convicted of a felony in the courts of this state . . . to own . . . or control any firearm . . . ."). (R 337-40, 370-71). The offenses are different because they each have at least

one unique element, even though both of them are similar in that they each have a common firearm element. Section 790.01(2) requires that the weapon be "concealed," and section 790.23 requires that the accused in possession of the firearm previously have been "convicted of a felony." Accordingly, if this Court conducts the analysis required by statute and case law alike, it must find that each offense has unique elements; consequently, convictions for each offense arising out of the same transaction does not violate double jeopardy, despite the overlapping firearm elements. Skeens, supra; Moore, supra. Thus, Respondent's two convictions and sentences did not violate double jeopardy.

Federal application of Blockburger clearly allows multiple firearm convictions based on possession of one firearm.[3] E.g., United States v. Haggerty, 4 F. 3d 901, 904 (10th Cir. 1993)(holding convictions for reckless handling of firearm and possession of firearm by felon, based on one episode, proper because they involved different crimes); Johnson v. Howard, 963 F. 2d 342, 346 (11th Cir. 1992)(holding Blockburger allowed

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[3] The double jeopardy clause of the Florida Constitution mirrors the same clause in the United States Constitution. See U.S. Const. Amend. V; Art. I, § 9, Fla. Const.; Carawan v. State, 515 So. 2d 161, 164 (Fla. 1987), superseded by statute, Smith 547 So. 2d at 613.

convictions for carrying pistol without license and possession of pistol after conviction for crime of violence based on possession of one pistol); United States v. Karlin, 852 F. 2d 968, 974 (7th Cir. 1988); United States v. Ouimette, 798 F. 2d 47, 50 (2d Cir. 1986); United States v. Stewart, 780 F. Supp. 1366, 1369 n.8 (N.D. Fla. 1991). Accordingly, under federal interpretation of Blockburger, a defendant may be convicted of multiple firearm offenses based on one episode. Thus, Respondent's convictions and sentences did not violate double jeopardy.

3. This Court's decisions in State v. Brown, infra, and State v. Stearns, infra, do not support the contention that Respondent's three firearm convictions and sentences violate double jeopardy.

An application of State v. Brown, 633 So. 2d 1059, 1060-61 (Fla. 1994), does not forbid Respondent's two firearm convictions on double jeopardy grounds. In Brown, the jury convicted the defendant of four offenses arising out of one episode: (1) armed robbery; (2) attempted first-degree murder; (3) use of a firearm in the commission of a felony; and (4) shooting into a building. Id. at 1060. On appeal, the First District reversed the defendant's conviction for use of a firearm in the commission of a felony, holding that the defendant could not be convicted of possession of a firearm during the commission of a felony when he also received

an enhanced sentence for carrying a firearm during the commission of a robbery, where both crimes took place in one criminal episode. Id. The district court stated that:

> The Legislature expressed its specific intent concerning separate convictions and sentences for two crimes committed during the same criminal transaction by the by the passage of . . . section 775.021(4)(b), Florida Statutes[.] The court stated in Smith, that 'absent a statutory degree crime or a contrary clear and specific statement of legislative intent . . . all criminal offenses containing unique statutory elements shall be separately punished and, thus, section 775.021(4)(a), Florida Statutes, should be strictly applied without judicial gloss.

Brown v. State, 617 So. 2d 744, 746 (Fla. 1st DCA 1993), approved, 633 So. 2d 1059 (Fla. 1994). However, the district court found that there was no distinction in the statutory elements of armed robbery and use of a firearm in the commission of a felony. 617 So. 2d at 747. Accepting this conclusion as valid, the district court's decision was proper because it was necessary to read the charging instrument to determine whether the possession of a firearm charge stemmed from the robbery or another offense. Because statutory offenses should be distinguishable just by comparing the statutory elements alone, defendant's conviction of both violated double jeopardy. See, e.g., Johnson, supra at 85 (holding that carjacking with a firearm and use or carrying of

firearm during crime of violence failed Blockburger because of impossibility of use or carrying firearm and not, at same time, possessing it); Singleton, supra at 1423-25 (same). In contrast, in the instant case it is clear, just by reading the statutory elements of Respondent's offenses, that there are unique elements in each offense that are dispositive of a double jeopardy claim. See supra. Thus, the trial court properly convicted and sentenced Respondent of the instant offenses.

Furthermore, State v. Stearns, 645 So. 2d 417, 418 (Fla. 1994), is not dispositive of the instant case for the same reason. In Stearns, the defendant was convicted of: (1) burglary of a structure while armed; (2) grand theft; and (3) carrying a concealed weapon while committing a felony. Stearns v. State 626 So. 2d 254, 255 (Fla. 5th DCA 1993). The issue on appeal was "whether a defendant, who commits an armed burglary of a structure and grand theft of property found therein, can also be convicted of carrying a concealed weapon while committing a felony." Id. The district court held that the defendant could not, and reversed his conviction for carrying a concealed weapon while committing a felony. Id. On review, this Court approved of the district court's decision, and expressly relied on its recent decision in Brown and, therefore, the First District's analysis below. State

v. Stearns, 645 So. 2d 417 (Fla. 1994). However, even if the Brown analysis is applied to the convictions in the instant case, this Court must find that there are unique elements in each offense, thereby allowing Respondent's multiple firearm convictions. See supra. Accordingly, Brown and Stearns are inapposite to the instant case. Thus, Respondent's convictions and sentences for all three firearm offenses, based on the possession of one firearm, did not violate double jeopardy.

Finally, these two cases were the basis for the First District's decision in A.J.H. v. State, 652 So. 2d 1279 (Fla. 1st DCA 1995), upon which Respondent relied below. In A.J.H., the defendant was convicted of unlawful possession of a firearm by a minor, carrying a concealed firearm, and possession of a firearm by one found guilty of a delinquent act that would have been a felony if committed by an adult. Id. Instead of comparing the offenses for unique elements (i.e., "minor," "concealed," and delinquent act same as adult felony), the First District turned the analysis on its head and focused on the similarity of the firearm element of each offense and reversed the first two convictions. Id. Thus, the court ignored what was unique and, instead, singled out what was common, thereby avoiding the logical finding that the crimes were indeed separate because of their unique elements. Skeens,

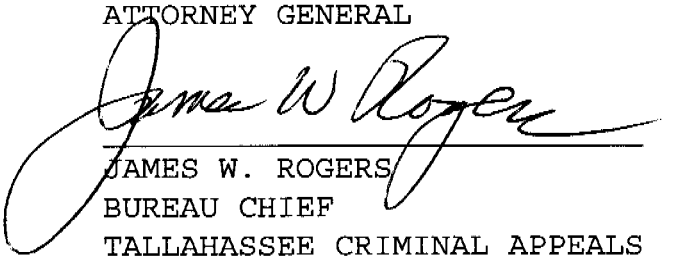
supra. Accordingly, A.J.H. is not dispositive of Respondent's two convictions and sentences. Thus, Respondent's convictions and sentences did not violate double jeopardy.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests that this Honorable Court reverse the First District's decision to vacate Respondent's conviction for carrying a concealed firearm, and remand the case to the trial court for reinstatement of that conviction and sentence.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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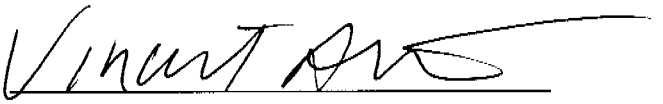

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to P. Douglas Brinkmeyer, Assistant Public Defender, Leon County Courthouse, Suite 401, North, 301 South Monroe Street, Tallahassee, Florida 32301, this 10 day of May, 1996.

Vincent Altieri
Assistant Attorney General

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Criminal law—Search and seizure—No error in trial court's determination that there was no reasonable expectation of privacy in contents of garbage can left outside privacy fence—Counsel—Error to fail to inform defendant of right of self-representation after hearing defendant's motion to discharge counsel based on incompetence—Error harmless in light of overwhelming evidence of guilt and later representations by defendant's counsel in defendant's presence that he did not desire to represent himself—Separate convictions for carrying concealed firearm and possession of firearm by convicted felon arising out of same incident improper—Question certified: When a defendant commits separate offenses during the same criminal episode, each involving a firearm, but each having separate and distinct elements, may the defendant be convicted and sentenced for each crime?

ANTONIO LEE CRAFT, Appellant, v. STATE OF FLORIDA, Appellee. 1st District. Case No. 95-671. Opinion filed March 5, 1996. An appeal from the Circuit Court for Escambia County. Frank Bell, Judge. Counsel: Nancy A. Daniels, Public Defender; P. Douglas Brinkmeyer, Assistant Public Defender, Tallahassee, for appellant. Robert A. Butterworth, Attorney General; Douglas Gurnic, Assistant Attorney General, Tallahassee, for appellee.

(WOLF, J.) Craft (defendant) was found guilty of first-degree murder and carrying a concealed firearm. In a subsequent trial arising out of the same incident, he was found guilty of possession of a firearm by a convicted felon. Defendant raises four issues on appeal: (1) Whether the lower court erred in denying appellant's motion to suppress evidence; (2) whether the lower court erred in denying appellant's motion for appointment of new counsel; (3) whether the lower court erred in allowing the homicide to become a feature of the trial for possession of a firearm by a convicted felon; and (4) whether the lower court erred in imposing judgments and sentences on both firearm offenses. We find no merit as to issue three, and affirm without discussion. As to issue one, we find that the trial court did not err in making the factual determination that there was no reasonable expectation of privacy as to the contents of a garbage can left outside a privacy fence. *See U.S. v. Hedrick*, 922 F.2d 396 (7th Cir. 1991), *cert. denied*, 502 U.S. 847, 112 S. Ct. 147, 116 L. Ed. 2d 113 (1991). We, therefore, affirm as to issue one.

As to issue two, while we find that the trial court erred in failing to inform the defendant as to his right of self representation after hearing defendant's motion to discharge counsel based on incompetence (*see Bodiford v. State*, 21 Fla. L. Weekly D9 (Fla. 1st DCA Dec. 18, 1995)), we find that such an error was harmless in light of the overwhelming evidence of guilt and the later representations by defendant's counsel in defendant's presence that he did not desire to represent himself. *See Parker v. State*, 570 So. 2d 1053 (Fla. 1st DCA 1990), *rev. denied*, 581 So. 2d 1309 (Fla. 1991).

As to issue four, we are required to vacate the conviction for carrying a concealed firearm for the reasons set forth in *Brown v. State*, 21 Fla. L. Weekly D10 (Fla. 1st DCA Dec. 18, 1995). We again certify the question previously certified in *Brown*:

> WHEN A DEFENDANT COMMITS SEPARATE OFFENSES DURING THE SAME CRIMINAL EPISODE, EACH INVOLVING A FIREARM, BUT EACH HAVING SEPARATE AND DISTINCT ELEMENTS, MAY THE DEFENDANT BE CONVICTED AND SENTENCED FOR EACH CRIME?

(BOOTH, J., concurs; BENTON, J., concurs in result.)

* * *

Contracts—Arbitration—Error to compel plaintiffs to arbitrate claim under provisions of contract where plaintiffs were not parties to contract and were not third party beneficiaries of contract

PAUL TARTELL and JODI TARTELL, Appellants, v. CLAUDIA CHERA, MICHAEL CHERA, STEVEN CHERA, VICTOR CHERA, and CHARLES CHERA, as the General Partners of CHERA REALTY & DEVELOPMENT CO. OF BROOKLYN, a New York General Partnership, THE KEYES COMPANY, a Florida corporation, SHEILA AMSTER, JAMES L. DENTICO and TRULY NOLEN EXTERMINATING, INC., a Florida corporation, Appellees. 4th District. Case No. 95-3296. L.T. Case No. 95-10745 (11). Opinion filed March 6, 1996. Appeal of a non-final order from the Circuit Court for Broward County; John A. Frusciante, Judge. Counsel: Patricia M. Silver of Silver & Waldman, P.A., Miami, for appellants. Bernard B. Weksler and Sina Negahbani of Law Offices of Bernard B. Weksler, Coral Gables, for Appellees-Truly Nolen Exterminating, Inc.

(PER CURIAM.) We reverse. The trial court erred in compelling arbitration of the appellants' claim against appellee, Truly Nolen, based on a contract between Truly Nolen and appellees, the Cheras, as appellants were not parties to the contract containing the arbitration clause. *See Sun City Diner of Boca Raton, Inc. v. Century Fin. Advisors, Inc.*, 662 So. 2d 967 (Fla. 4th DCA 1995); *Barnett Sec., Inc. v. Faerber*, 648 So. 2d 265 (Fla. 2nd DCA 1995); *Karlen v. Gulf & Western Indus., Inc.*, 336 So. 2d 461 (Fla. 3d DCA 1976).

While appellees contend that the appellants seek to be third party beneficiaries under the contract and are therefore subject to its arbitration clause, *see Zac Smith & Co. v. Moonspinner Condominium Ass'n*, 472 So. 2d 1324 (Fla. 1st DCA 1985), the appellants' complaint does not claim rights under the contract. At most, the appellants are incidental beneficiaries of the contract, not third party beneficiaries which would require that the parties to the contract intended to primarily and directly benefit the appellants. *See generally Aetna Casualty & Sur. Co. v. Jelac Corp.*, 505 So. 2d 37 (Fla. 4th DCA 1987).

Reversed and remanded. (WARNER, KLEIN and SHAHOOD, JJ., concur.)

* * *

Workers' compensation—Rule nisi proceedings to enforce order of judge of compensation claims providing for emergency relief in form of temporary attendant care benefits—Trial court's authority in rule nisi proceeding is limited to determining whether subject order is still in effect and, if it is, enforcing it—No merit to carrier's contention that emergency order was not final and subject to appeal—Carrier's contention that attendant care was no longer necessary because of improvement in claimant's condition is issue which should have been raised in modification proceedings before JCC—Trial court erred by not enforcing order

KAREN SUE FRANK, Appellant, v. CRAWFORD & COMPANY, Appellee. 4th District. Case No. 94-3344. L.T. Case No. 94-10079-07. Opinion filed March 6, 1996. Appeal from the Circuit Court for Broward County; John Luzzo, Judge. Counsel: Jonathan M. Sabghir of Jonathan M. Sabghir, P.A., Tamarac, for appellant. Lisa M. Sutton and Joseph H. Lowe of Marlow, Connell, Valerius, Abrams, Lowe & Adler, Miami, for appellee.

(WARNER, J.) The appellant challenges the trial court's order dismissing her petition for a rule nisi to enforce the order of the Judge of Compensation Claims providing for emergency relief in the form of temporary benefits under section 440.25(4)(h), Florida Statutes (Supp. 1994). We hold that the trial court erred in not enforcing the order and that if the appellee wished to challenge its efficacy, it was required to file a motion for relief with the Judge of Compensation Claims (JCC).

Appellant Frank was injured in an accident covered by workers' compensation while in the employ of Winn-Dixie Stores, Inc. As a result, she underwent knee surgery which left her unable to care for her two children, then three and a half years old and seven weeks old. The carrier refused to provide temporary round-the-clock attendant care, and Frank filed a motion for emergency conference with the JCC requesting 24-hour live-in care five days per week, with Frank's friends and family providing care the remaining 48 hours.

Frank's motion was heard, with the judge relying on section 440.25(4)(h) as authority for the emergency hearing. It determined that Frank was unable to care safely for her two sons and awarded 24-hour care. The judge's order stated: "This attendant care may be of a limited, temporary and interim basis, until such time as claimant is capable of full weight bearing and ambulation, such that she is able to safely and properly care for the round-the-clock needs attendant to her status as mother of two very young