

Florida Supreme Court  
Tallahassee, Florida.

FILED

SID J. WHITE

MAR 13 1997

CLERK, SUPREME COURT

By

Chief Deputy Clerk

State of Florida  
Petitioner

v.

Case No - 89,380

Jimmy Hudson  
Respondent

Brief of Respondent

Comes Now Jimmy Hudson in Pro se, and enters his response to the Petitioner's Initial Brief in the above-styled cause.

Respondent avers that the statement of The Case AND Facts presented by Petitioner are correct.

Respondent disagrees with Petitioner's stance as to what the Legislature Intended. The Legislature in NO way intended to take away a Judge's authority to use discretion in sentencing. Every Judge must have discretion in imposing sentence as every case is different.

Respondent avers that to take away all the discretionary power of the Judges, as the Petitioner is suggesting, would eliminate the need for said Judges at sentencing.

If the argument of Petitioner is accepted as to what the Legislature INTENDED, then a Judge's role would end once a defendant is convicted or enters a plea. The Clerk of Court could then read the statute requirement and that would be the Defendant's sentence.

Without the Judges' discretion there would be no mitigating or aggravating factors; No Need of Presentence Investigation Reports; No Need for scoresheets.

The Judge in the case at bar used his discretionary authority through-out the sentencing, the hearing and re-hearing, as he rightly should, and to usurp said discretion now would result in Double Jeopardy; and said Double Jeopardy would result in a violation of Ex Post Facto law.

Resentencing would result in a much harsher sentence than originally imposed by the Trial Court.

This Honorable Court's rulings in Walshingham v. State, 602 So. 2d 1297 (Fla. 1992); Burdick v. State, 594 So. 2d 267 (Fla. 1992); and State v. Brown, 530 So. 2d. 51, (Fla. 1988) have already addressed this same issue of discretion and interpretation.

The Petitioner is attempting to have this Court admit it made a mistake in its interpretations of what the legislature intended in the above cases, and accept the Petitioner's interpretation as a more Intelligent interpretation!!

#### CONCLUSION

Respondent would suggest that, since this Honorable Court is more learned in regards to interpreting what the legislature intends, and has already dealt with this issue (cases cited supra), The Petitioner's argument should be rejected and the lower Court's order/ruling allowed to stand.

Respectfully submitted,

H ~~Jimmy~~ Hudson  
Jimmy Hudson  
Respondent in Pro Se.

I, Jimmy Hudson, Respondent in Pro se, avers that the above, foregoing and attached are true and correct to the best of my knowledge and belief.

under penalty of perjury, Respondent states the above is true; And that a true and correct copy of this has been placed in the U.S. mail to the Attorney General's Office, Dept. of Legal Affairs, 444 Brickell Ave., Suite 950, Miami, FL, 33131, on this 6 day of March, 1997.

Respectfully submitted

~~H~~ Jimmy Hudson

Jimmy Hudson

063803 MN 066

Charlotte Correctional Inst.

33123 Oil Well Rd.

Punta Gorda, FL 33955

In The Circuit Court  
16<sup>th</sup> Judicial Circuit  
MONROE County

Jimmy Hudson  
Petitioner

- v -

State of Florida,  
Dept. of Corrections  
Respondents

CASE No. 92-1731 - CF  
92-1563 - CF

Motion For Clarification

Comes now Jimmy Hudson, Petitioner in Pro Se, and enters this motion for clarification of sentence.

statement of Facts

ON February 26, 1993, Petitioner was sentenced by this court to a term of Twelve (12) years on 92-1731-CF; and (60) days concurrently on 92-1563-CF.

As the sentencing records for these cases clearly show, there was NO MINIMUM mandatory sentence stated orally and/or verbally by this court in its sentencing order: see Page 10, lines 5 thru 15 of the sentencing Record.

ON April 1, 1993 and received by this Court on April 5, 1993, the Department of Corrections demanded that this court re-sentence Petitioner to (15) years in prison.

Thereafter ON July 29, 1993 this Court held a hearing on this matter. The state itself recommended that the state keep the sentence as previously imposed as it was legal and binding: See ~~Hearing~~ Hearing Record Page 4, lines 9, 10 and 11.

This Honorable Court agreed with the state and ordered the original sentence to stand: see Hearing Record of July 29, 1993, lines 12 thru 20.

By order of this Honorable Court, ON TWO separate occasions, the sentence was declared legal and binding, and there was NO minimum mandatory requirement stated by the Court.

Yet the State of Florida, Department of Corrections is denying Petitioner Goin time and states that the Court intended Petitioner to serve a full Twelve (12) years with NO gain time allowed.

Petitioner avers that this is NOT the sentence imposed as there was NO minimum mandatory ordered by this Honorable Court at sentencing.

This Court, and only this Court, by its specific order sets the sentence, NOT the State and Department of Corrections. Since there was NO minimum mandatory ordered at sentencing, Petitioner contends his sentence is 12 years with gain time allowed.

## CONCLUSION

Wherefore, in view of the above and foregoing facts and circumstances, your Petitioner asks this Honorable Court to Order the State and Department of Corrections to adhere to the sentence as imposed and allow Petitioner all gain time merited under the laws in effect at time of sentencing.

Respectfully submitted,

1s/ Jimmy Hudson  
Jimmy Hudson

I, Jimmy Hudson, hereby state under penalty of perjury that the above is true and correct to the best of my knowledge and belief. I also aver I am indigent and ask to be allowed to proceed in Forma Pauperis.

1s/ Jimmy Hudson  
Jimmy Hudson  
412387    MM



STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS  
CHARLOTTE CORRECTIONAL INSTITUTION

CLASSIFICATION DEPARTMENT

MEMO TO: HUDSON, JIMMY DC#063803 # 0066  
FROM: T. Abraham, CSSS JA  
DATE: November 26, 1996  
SUBJECT: Letter to C. Dula in Central Office

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First let me start with your correct D.C. number is 063803.

This is in response to your letter sent to C. Dula, you are asking that the department restructure your sentence to remove the 12 years Habitual Violent Offender.

The commitment papers that I have in your inmate file, case #92-01731, clearly states that you are sentenced as ~~"HABITUAL VIOLENT OFFENDER"~~, you were not sentenced a straight 12 years and you are not eligible for the 1/3 off.

However, you were given the 79 days county jail time credit.

We have received no paperwork from the Clerk of the Circuit Court that would change this sentence.

TA

cc: Inmate File

DATE: 11-19-96

DC#

FROM: Janet Hebenthal  
Sentence Structure Administrator

063803

CHARLOTTE CORRECTIONAL  
NOV 25 1996  
CLASSIFICATION

TO: Classification Supervisor

- |                            |                           |
|----------------------------|---------------------------|
| _____ APALACHEE CI         | _____ LANCASTER CI        |
| _____ AVON PARK CI         | _____ LANTANA CI          |
| _____ BAKER CI             | _____ LAWTEY CI           |
| _____ BAY CI               | _____ LIBERTY CI          |
| _____ BREVARD CI           | _____ MADISON CI          |
| _____ BROWARD CI           | _____ MARION CI           |
| _____ CALHOUN CI           | _____ MARTIN CI           |
| _____ CENTRAL FL RECEPTION | _____ MAYO CI             |
| _____ CENTURY CI           | _____ MOORE HAVEN CI      |
| ✓ _____ CHARLOTTE CI       | _____ NEW RIVER CI        |
| _____ COLUMBIA CII         | _____ NORTH FL RECEPTION  |
| _____ CORRECTIONS MH       | _____ OKALOOSA CI         |
| _____ CROSS CITY CI        | _____ OKEECHOBEE          |
| _____ DADE CI              | _____ POLK CI             |
| _____ DESOTO CI            | _____ PUTNAM CI           |
| _____ EVERGLADES CI        | _____ QUINCY CI           |
| _____ FLORIDA CI           | _____ RIVER JUNCTION CI   |
| _____ FLORIDA STATE PRISON | _____ SANTA ROSA CI       |
| _____ GADSDEN CI           | _____ SOUTH FLA RECEPTION |
| _____ GLADES CI            | _____ SUMTER CI           |
| _____ GULF CI              | _____ TAYLOR CI           |
| _____ HAMILTON CI          | _____ TOMOKA CI           |
| _____ HARDEE CI            | _____ UNION CI            |
| _____ HENDRY CI            | _____ WAKULLA CI          |
| _____ HILLSBOROUGH CI      | _____ WALTON CI           |
| _____ HOLMES CI            | _____ WASHINGTON CI       |
| _____ INDIAN RIVER CI      | _____ ZEPHYRHILLS CI      |
| _____ JACKSON CI           | _____ REGION II           |
| _____ JEFFERSON CI         | _____ REGION III          |
| _____ LAKE CI              | _____ REGION IV           |
| _____ REGION I             | _____ REGION V            |

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✓ PLEASE REVIEW & RESPOND TO INMATE

SEE ATTACHED

*We have not received anything from Court  
advising that minimum term of 12 yrs for #00  
should not be imposed.*

RECEIVED

#063803

NOV 18 1996

Ms. Cheryl Dula

Central Records Office  
2601 Blainstone Road  
Tallahassee, Florida 32399-2500

ADMISSION & RELEASE AUTHORITY  
COMMITMENT & SENTENCE

Re: Jimmy Hudson DOC #412387

Dear Ms. Dula:

In view of the attached documents, I am requesting that my record be revised to reflect the proper structure of my sentence.

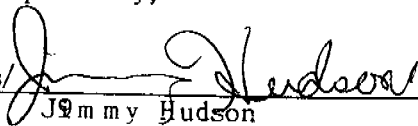
Ms. Janet Hebenthal, Commitment & Sentence Data Administrator (See attached letter) has incorrectly and without authorization, made my sentence of twelve (12) years a mandatory sentence.

As the Court documents show, and as the Third District Court of Appeals has ruled, there is no mandatory provision in my sentence, and the Department of Corrections is without authority to do as they did (See letter attached).

Therefore, I respectfully request that my sentence be structured as the Trial Court ordered - a straight 12 year sentence with no mandatory, and that I be granted the 1/3 off my sentence as well as credit for the gain-time I have earned since my incarceration in the Department of corrections; It should also reflect the jail-time credit that the Judge granted at sentencing.

Thanking you in advance and hoping to receive the new, correct release date in the near future, I remain,

Respectfully,

/s/   
Jimmy Hudson

412387 MN 066  
Charlotte Correctional Inst.  
33123 Oil Well Road  
Punta Gorda, FL 33955

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JULY TERM, A.D. 1996

JIMMY HUDSON,

\*\*

Appellant,

\*\*

vs.

\*\*

CASE NO. 96-1927

THE STATE OF FLORIDA,

\*\*

LOWER

Appellee.

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TRIBUNAL NOS. 92-1731  
92-1563

Opinion filed November 6, 1996.

An Appeal under Fla.R.App.P. 9.140(g) from the Circuit Court  
for Monroe County, Richard J. Fowler, Judge.

Jimmy Hudson, in proper person.

Robert A. Butterworth, Attorney General, for appellee.

Before BARKDULL, NESBITT and JORGENSON, JJ.

PER CURIAM

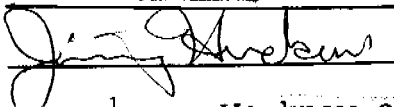
The defendant filed a motion to correct illegal sentence  
contending that the trial court improperly amended his sentence  
to add a minimum mandatory term pursuant to the habitual violent

felony offender statute. See Fla. Stat. § 775.084 (4) (1995).

The state and the defendant had agreed that he would plead guilty in exchange for a twelve year sentence should he be found to qualify as a habitual violent felony offender. The presentence investigation report showed that he did so qualify and he was sentenced to twelve years in prison. There was no mention of a minimum mandatory portion of the sentence in either the written plea agreement, the colloquy at sentencing or the sentencing documents. After the defendant began serving his sentence, the Department of Corrections wrote to the trial judge and stated that the sentencing documents did not refer to a mandatory term ~~but they had set up the defendant's record to show a twelve year mandatory sentence pursuant to Florida Statute Section 775.084.~~

The defendant filed a motion to correct illegal sentence and the trial judge ruled that the sentence previously imposed by the court would remain in effect.

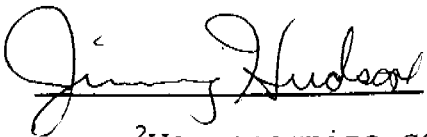
Since the state maintains and the record shows that the defendant's sentence has never been amended from the original sentence imposed, we affirm. However, this affirmance is without prejudice to the defendant to again challenge his sentence ~~because~~ the Department of Corrections seek to enforce a mandatory term



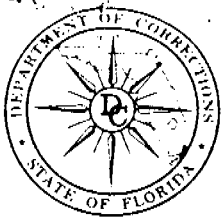
<sup>1</sup> We know of no authority for the Department of Corrections to add additional conditions to a sentence. This is a court function. See Slay v. Singletary, 676 So. 2d 456 (Fla. 1st DCA 1996); Thomas v. State, 612 So. 2d 684 (Fla. 5th DCA 1993); Wilson v. State, 603 So. 2d 93 (Fla. 5th DCA 1992).

Washington v. State, 662 So. 2d 1027 (Fla. 5th DCA 1995). The imposition of minimum mandatory terms under the habitual offender statute is permissive, not mandatory, so the sentence imposed is not illegal.<sup>2</sup> See State v. Morales, 678 So. 2d 510 (Fla. 3d DCA 1996); Zequeira v. State, 671 So. 2d 279 (Fla. 3d DCA 1996). Furthermore, if the trial judge had resentenced the defendant to a greater term of imprisonment subsequent to the entry of a jurisdictionally permissible term, it would have constituted double jeopardy. Evans v. State, 675 So. 2d 1012 (Fla. 4th DCA 1996); Gonzalez v. State, 596 So. 2d 711 (Fla. 3d DCA 1992).

Affirmed.



<sup>2</sup>We recognize conflict with other districts on this point, see White v. State, 618 So. 2d 354 (Fla. 1st DCA 1993); Sims v. State, 605 So. 2d 997 (Fla. 2d DCA 1992); Martin v. State, 608 So. 2d 571 (Fla. 5th DCA 1992), although the Fourth District has also held that the imposition of mandatory minimum terms is discretionary. See Green v. State, 615 So. 2d 823 (Fla. 4th DCA 1993).



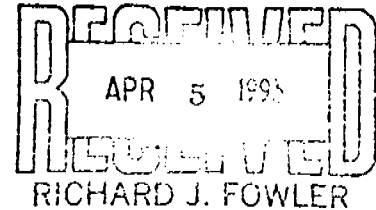
FLORIDA  
DEPARTMENT of  
CORRECTIONS

Governor  
LAWTON CHILES  
Secretary  
HARRY K. SINGLETARY, JR.

2601 Blair Stone Road • Tallahassee, Florida 32399-2500 • (904) 488-5021

April 1, 1993

Honorable Richard Fowler  
Judge, 16th Judicial Circuit  
Monroe County Courthouse Annex  
500 Whitehead Street  
Key West, Florida 33040



RE: Jimmy Hudson, DC# 412387  
Your Case No: 92-1731

Dear Judge Fowler:

On February 26, 1993, the above-named inmate was sentenced in your Court to serve 12 years in the case referenced above. The court documents received indicates he was sentenced as a habitual violent felony offender for a 1st degree felony which requires service of a minimum of 15 years prior to release pursuant to Florida Statutes, Section 775.084.

In most cases, the Court will stipulate the minimum service requirement when an offender is sentenced as a habitual violent felony offender. However, the sentencing documents we hold for this offender do not contain this additional language even though the statute under which he was sentenced mandates service of a minimum term.

We have set up the record in accordance with Florida Statutes, Section 775.084 as outlined above but could only show a 12 year mandatory sentence. If this action is not in accordance with Court intent, please provide this office with an amended sentence which does not sentence this offender as a habitual "violent" felony offender.

If you have any questions about this case, you may contact me at (904) 487-3464 or Suncom 278-3464.

Sincerely,

Janet Hebenthal  
Commitment & Sentence Data Administrator

JH/rs

cc: Sally A. Parr, Assistant State Attorney  
South Florida Reception Center

— ATTACHMENT C —