

**ORIGINAL**  
IN THE SUPREME COURT OF FLORIDA

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**RENIEL SANTIAGO,**

**Petitioner/Defendant**

vs.

93,822  
Case no. ~~98,822~~

**STATE OF FLORIDA,**

**Respondent/Plaintiff,**

\_\_\_\_\_ /

**Appeal from the Fourth District Court of Appeal**

**REPLY BRIEF OF PETITIONER**

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**By: H. Dohn Williams Jr.**

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## ARGUMENT

**Florida Statute 322.34(1)(c) (1995) is unconstitutional as applied to offenders, such as the Petitioner, with two prior convictions for driving with a suspended license.**

When the legislature substantially amended the driving with a suspended license statute, it sought to authorize progressively harsher sentences by escalating the severity of the offense from a second-degree misdemeanor to a first-degree misdemeanor to a third degree felony for multiple “convictions.” However, unlike the DUI statute, there is no mandatory “adjudication of guilt.” Our argument is that the term “conviction” is synonymous with “an adjudication of guilt.” Thus, three “adjudications of guilt” (convictions) are a condition precedent to the severity of the offense increasing to a third degree felony. Whereas, the State opines the term “conviction” merely means a disposition regardless of whether the court withholds adjudication of guilt.

The State’s brief demonstrates that the term “conviction” does not simply mean a disposition. See, Delta Truck Brokers v. King, 142 So.2d 273 (Fla.1962) (conviction in the context of a statute preventing one from engaging in a brokerage business without a license means determination of guilt and judgment of court); Weathers v. State, 56 So.2d 536 (Fla.1952) (conviction of a principal means adjudication of guilty); Ellis v. State, 100 Fla. 27, 129 So. 106 (1930)

(judgment of conviction in a misdemeanor case must contain an adjudication of guilty by the court); Timmons v. State, 97 Fla. 23, 119 So. 393 (1929) (when alleging prior convictions in an indictment, conviction must include adjudication by the court); State ex rel. Owens v. Barnes, 24 Fla. 153, 4 So. 560 (1888) (conviction may on occasion have different meanings depending upon the context in which it is used); Accredited Sur. & Cas. Co. v. State, 318 So.2d 554 (Fla. 1st DCA 1975) (conviction for purposes of the bail bond statute means adjudication of guilt and not a guilty plea).

Barber v. State, 413 So.2d 482 (Fla. 2<sup>nd</sup> DCA 1982) and Johnson v. State, 449 So.2d 921 (Fla. 1<sup>st</sup> DCA 1984), dealt with the term “conviction” within the context of impeachment under the Evidence Code. Whereas, in this case we are dealing with the term “conviction” within the context of a penal statute providing for enhanced punishment for multiple “convictions,” and making the offender a “convicted felon” for three “convictions.”

It appears that when a statute imposes a penalty, or requires successive “convictions” for the escalating penalties to apply, that a “conviction” is synonymous with “an adjudication of guilt.” In Smith v. State, 75 Fla. 468, 78 So. 530 (Fla. 1918), the State sought to impose escalating penalties for multiple convictions. Smith was convicted of the offense of selling alcoholic beverages in a

dry county. A first offense was a misdemeanor; however, selling intoxicating liquors, having been before convicted of a like offense, was a felony. This Court construed "convicted" to mean the adjudication by the court of the defendant's guilt. "When the law speaks of 'conviction' it means a judgment, and not merely a verdict, which in common parlance is called a conviction." "Id. at 532.

Likewise, in Childers v. Department of Environmental Protection, 696 So.2d 962 (Fla. 1st DCA 1997), the Department sought to impose a penalty of Childers -- the loss of his saltwater products license. Childers challenged that "convicted," meant an adjudication of guilt, and conversely that a withheld adjudication of guilt did not constitute a conviction. The District Court agreed. The court declared a mere disposition was not sufficient because a "conviction" meant an "adjudication of guilt."

The District Court opines that the term "conviction" simply means "an admission or determination of guilt regardless of whether adjudication of guilt is withheld." The gist of the District Court's reasoning is the term "conviction" is chameleon-like term, which has long been held to require an adjudication of guilt, but in some instances does not require an adjudication of guilt. To hold this statute constitutional, it defined the term to mean "an admission of guilt or determination of guilt regardless of whether adjudication of guilt is withheld." If the term

“conviction” is chameleon-like, then the rule of lenity comes into play. Given its chameleon-like character how was Santiago to “know” in this instance, it merely meant a disposition regardless of whether adjudication of guilt is withheld. The prosecutor did not know it. In filing charges against Santiago, the prosecutor opined “conviction” meant an “adjudication of guilt.” According to Santiago’s driving record, on May 29, 1991, he was charged with driving with a suspended license, and on July 15, 1991, the court “withheld adjudication of guilt.” (R. 17) If the prosecutor opined that a “withheld adjudication” was a conviction, the Information would have pleaded all his “dispositions.” The prosecutor’s common perception was that a “withheld adjudication” was not a “conviction.” The prosecutor also interpreted “conviction,” as persons regularly construe it in the criminal justice system, to include an adjudication of guilt.

To avoid confusion in Florida jurisprudence, which provides for a withheld adjudication of guilt, the solution is simple. The term “conviction” means an adjudication of guilt, unless the legislature defines the term differently. Thus, the legislature can do as it has done with the disciplinary statutes regulating the various professions. Define the term “conviction” to mean “(b)eing found guilty, regardless of adjudication.” Or, draft the statute like the DUI statute by mandating an adjudication of guilt whenever there is a plea of guilty or nolo contendere or a

verdict of guilty; then there is no confusion.

### CONCLUSION

The common perception in the Florida criminal justice system is that when adjudication of guilt is withheld, a defendant is not “convicted.” In the challenged statute, the term “conviction” is not defined, so the ordinary perception is that a conviction includes an adjudication of guilt. The legislature attempted to create a statute that provided for progressively harsher punishment for successive “convictions” but its wording created confusion. Given the confusion, the doubt goes to Santiago. The statute is unconstitutional as applied to him. The defect must be cured by the legislature.




**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was mailed and/or hand-delivered and/or faxed on the   1   day of March 1999 to:

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