IN THE SUPREME COURT OF FLORIDA

JOHNATHAN JEFFRIES,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 92,007

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

JAMES R. WULCHAK
CHIEF, APPELLATE DIVISION
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 249238
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114

(904)252-3367

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

JOHNATHAN JEFFRIES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO.
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	

STATEMENT OF THE CASE AND FACTS

The petitioner, JOHNATHAN JEFFRIES, is a juvenile who was sentenced as an adult. In imposing sentence, the trial court did not comply with the requirements of Chapter 39, Florida Statutes, for sentencing the juvenile as an adult, as the trial court did not consider juvenile sanctions and did not give reasons for the rejection of any juvenile sanctions. Additionally, the record does not show that the judge considered a presentence investigation or the mandatory sentencing recommendation from the Department of Juvenile Justice prior to its sentencing decision.

However, defense counsel did not object below. On appeal, the defendant presented to the district court the sentencing errors which were apparent from the face of the record. However, the district court issued a per curiam affirmance, citing the case of ***Cargle v. State***, 22 Fla. L. Weekly D2215 (Fla. 1st DCA September 18, 1997) (discretionary review pending in this Court), as controlling authority for the affirmance. ***Jeffries v. State***, 22 Fla. L. Weekly

D2557 (Fla. 5th DCA November 7, 1997) ***Cargle*** holds that although the Criminal Appeals Reform Act's requirement (for a contemporary objection in order to preserve a sentencing issue for appeal) does not apply to juvenile sentencings, the Act does apply to juveniles who are being sentenced as an adult. ***Id.***

The defendant, relying on ***Jollie v. State***, 405 So.2d 418 (Fla. 1981) (conflict jurisdiction lies where the district court has issued a per curiam affirmance citing, as controlling authority, a case pending discretionary review before the Supreme Court), filed his Notice to Invoke the Discretionary Jurisdiction of this Court on December 8, 1997. This brief on jurisdiction follows.

SUMMARY OF ARGUMENT

The decision of the district court, by citing as controlling authority a case pending review in this Court, directly and expressly conflicts with decisions of this Court or other district courts of appeal on the same issue of law.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT, IN ***JEFFRIES v. STATE***, 22 Fla. L. Weekly D2557 (Fla. 5th DCA November 7, 1997), EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THE SUPREME COURT OF FLORIDA OR OTHER DISTRICT COURTS OF APPEAL.

The opinion of the Fifth District in the instant case cited as controlling authority the case of ***Cargle v. State***, 22 Fla. L. Weekly D2215 (Fla. 1st DCA September 18, 1997), which case is currently pending review by this Court. ***Cargle*** stands for the proposition that the Criminal Appeals Reform Act, while not applying to juvenile sentencings, does apply to juveniles who are being sentenced as an adult. Thus, the district court in the instant case has ruled that the issues raised by Defendant Jeffries in his direct appeal could not be addressed on their merits since the sentencing errors were not objected to below. ***Cargle v. State***, ***supra***, is currently pending review by this Court. Therein, the petitioner has argued that that decision conflicts with ***State v. Rhoden***, 448 So.2d 1013 (Fla. 1984); and ***State v. Montague***, 682 So.2d 1085 (Fla. 1996).

Pursuant to ***Jollie v. State***, 405 So.2d 418 (Fla. 1981), where a case is cited by the district court as controlling authority and that case is currently pending review by the Supreme Court, conflict jurisdiction will lie.

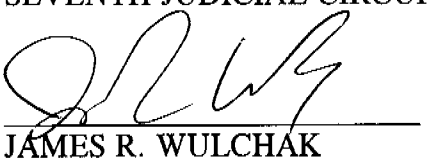
Thus, this Court's discretionary review should be exercised and the decision of the Fifth District Court of Appeal reversed.

CONCLUSION

BASED UPON the cases, authorities, and policies cited herein, the petitioner requests that this Honorable Court accept jurisdiction of this cause, vacate the decision of the District Court of Appeal, Fifth District, and remand with instructions for the District Court decide the appeal on the merits.

Respectfully submitted,

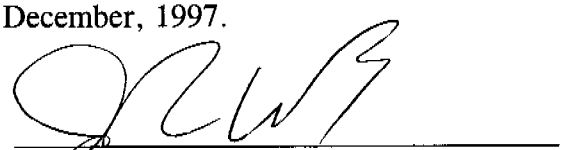
JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



JAMES R. WULCHAK
CHIEF, APPELLATE DIVISION
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 249238
112 Orange Avenue - Suite A
Daytona Beach, Florida 32114
(904) 252-3367

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. Johnathan Jeffries, Inmate # J02279, Lancaster Work Camp, P.O. Box 158, Trenton, FL 32693, this 18th day of December, 1997.



JAMES R. WULCHAK
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

JOHNATHAN JEFFRIES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO.
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	

APPENDIX

Jeffries v. State
22 Fla. L. Weekly D2557 (Fla. 5th DCA November 7, 1997)

Appendix A

742 So. 2d at 730.

The verdict form in this case was not technically a "special verdict form" as referenced in *Tripp*. However, it did more than merely reference the charges in the information. For each of these counts, the jury actually had to make a finding that a firearm was used. In our opinion, that is the essence of the *Tripp* requirements. We recognize, however, that had there been more than one assailant or defendant involved, a specific finding as to which defendant used a weapon would be necessary.

Although logical, we recognize that our interpretation of *Tripp* may be erroneous and we certify the following question to the Florida Supreme Court, as constituting an issue of great public importance:

IN A CASE IN WHICH THERE IS ONLY ONE DEFENDANT AND ASSAILANT, WHO HAS BEEN CONVICTED OF CRIMES FOR WHICH THE PENALTIES MAY BE ENHANCED PURSUANT TO SECTION 775.087(1) AND FOR WHICH MANDATORY SENTENCES MAY BE IMPOSED PURSUANT TO SECTION 755.087(2), IF THE DEFENDANT USED A WEAPON OR FIREARM IS IT SUFFICIENT TO SUSTAIN THOSE ENHANCED PENALTIES IF THE JURY FINDS THE DEFENDANT GUILTY OF HAVING COMMITTED THOSE FELONIES "WITH A FIREARM" AS CHARGED IN THE INFORMATION, OR MUST THERE ALSO BE A SEPARATE ADDITIONAL SPECIFIC VERDICT FORM THAT THE JURY FOUND THIS DEFENDANT COMMITTED THOSE CRIMES WITH A WEAPON OR FIREARM?

AFFIRMED; QUESTION CERTIFIED. (GRIFFIN, C.J., COBB, GOSHORN, HARRIS, PETERSON, and ANTOON, JJ., concur. DAUKSCH, J., dissents with opinion, in which THOMPSON, J., concurs.)

---

[1]Fla. R. App. P. 9.030(a)(2)(B)(i).

[2]Those sections provide:

775.087. Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence

(1) Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant carries, displays, uses, threatens, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified as follows:

(a) In the case of a felony of the first degree, to a life felony.

(b) In the case of a felony of the second degree, to a felony of the first degree.

(c) In the case of a felony of the third degree, to a felony of the second degree.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense which is reclassified under this section is ranked one level above the ranking under Sec. 921.0012 or Sec. 921.0013 of the felony offense committed.

(2) Any person who is convicted of a felony or an attempt to commit a felony and the conviction was for:

(a) Murder;
(b) Sexual battery;
(c) Robbery;
(d) Burglary;
(e) Arson;
(f) Aggravated assault;
(g) Aggravated battery;
(h) Kidnapping;
(i) Escape;
(j) Aircraft piracy;
(k) Aggravated child abuse;
(l) Unlawful throwing, placing, or discharging of a destructive device or bomb;
(m) Carjacking;
(n) Home-invasion robbery; or
(o) Aggravated stalking

and during the commission of the offense, such person possessed a "firearm" or "destructive device" as those terms are defined in s. 790.001(4), shall be sentenced to a minimum term of imprisonment of 3 years. Notwithstanding s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld and the defendant is not eligible for statutory gaintime under s. 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, prior to serving the minimum sentence.

(DAUKSCH, J., dissenting.) I respectfully dissent.

In *State v. Tripp*, 642 So. 2d 728 (Fla. 1994), the supreme court answered the following question in the negative:

MAY A TRIAL COURT RECLASSIFY A FELONY CONVICTION PURSUANT TO SECTION 775.087(1) ABSENT A SPECIFIC FINDING ON THE JURY'S VERDICT FORM THAT A DEFENDANT CARRIED, DISPLAYED, USED, ETC. ANY WEAPON OR FIREARM OR THAT HE COMMITTED AN AGGRAVATED BATTERY DURING THE COMMISSION OF THE FELONY SUBJECT TO RECLASSIFICATION?

In *Riley v. State*, 654 So. 2d 621 (Fla. 5th DCA), *dismissed*, 659 So. 2d 1088 (Fla. 1995), this court reiterated the rule. This court must follow the dictates of our supreme court and we should follow the precedent set in this court.

This is the precise issue before this court so I must dissent from the affirmance. I note the state does not contest the point but merely asserts the error was not preserved. It was preserved when defense counsel requested the verdict form to be done properly.

I would vacate the sentence and remand for a proper one. (THOMPSON, J., concurs.)

* * *

KENNEDY v. STATE. 5th District. #97-1602. November 7, 1997. 3.850 Appeal from the Circuit Court for Brevard County. AFFIRMED.

(GRIFFIN, C.J., dissenting.) I respectfully dissent. I believe Mr. Kennedy was entitled to an evidentiary hearing on his motion for post-conviction relief based on his allegations of ineffective assistance of trial counsel.

BROWN v. STATE. 5th District. #97-2800. November 7, 1997. Petition for Writ of Habeas Corpus, A Case of Original Jurisdiction. AFFIRMED. *See McCray v. State*, 22 Fla. L. Weekly S627 (Fla. Oct. 9, 1997).

JEFFRIES v. STATE. 5th District. #97-35. November 7, 1997. Appeal from the Circuit Court for St. Johns County. AFFIRMED. *Cargle v. State*, 22 Fla. L. Weekly D2215 (Fla. 1st DCA Sept. 18, 1997).

* * *