

IN THE SUPREME COURT OF FLORIDA

SHEROD DILLARD, :
 :
 Petitioner, :
 :
 vs. : Case No. 92,615
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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STATEMENT OF TYPE USED

I certify the size and style of type used in this brief is Courier 12 point, a font that is not proportionally spaced.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT IMPROPERLY IMPOSED CONSECUTIVE SENTENCES WHICH EXCEEDED THE SENTENCE ALLOWED BY THE SCORESHEET WITH THE MOST SEVERE SANCTION WHEN SENTENCING VIOLATION CASES IN CONJUNCTION WITH A NEW LAW OFFENSE CASE?

Respondent relies on the case of Allen v. State, 664 So. 2d 4 (Fla. 3d DCA 1995) to support the proposition that it was proper to impose consecutive sentences in this situation where two separate scoresheets are utilized. The Allen case did not address the questions of whether consecutive sentences are proper where two separate scoresheets are utilized. Furthermore the sentence imposed in Allen did not impose incarceration greater than that allowed by the most severe scoresheet. In Allen, community control and probation were imposed consecutive to a prison sentence but no additional incarceration was imposed.

Respondent suggests that the legislative intent implied that it was not inappropriate to consecutively sentence under the old and new guidelines. However, criminal statutes must be strictly construed in favor of an accused against whom a penalty is to be imposed, and against the state. Ferguson v. State, 377 So. 2d 709 (Fla. 1979). In this situation where the state is seeking an enhanced penalty where a persons liberty is deprived to a greater

extent than previously possible, the language must be clearly set forth. Thus it was not proper to impose consecutive sentences prior to the time that Florida Rule of Criminal Procedure 3.703 (d)(3) was enacted on October 1, 1995, which specifically stated a consecutive sentence was permissible. Since Petitioner's cases involved crimes prior to October 1, 1995, it was not permissible to impose consecutive sentences. The sentence Mr. Dillard received, where he received incarceration greater than that allowed by the most severe scoresheet, violated the precepts of Tito v. State, 616 So. 2d 39 (Fla. 1993).

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Dale E. Tarpley, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this _____ day of March, 1999.

Respectfully submitted,

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