

IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

JUL 2 1998

STATE OF FLORIDA,

Petitioner,

v.

RICKY ALLEN DODSON,

Respondent.

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CLERK, SUPREME COURT  
By                       
Chief Deputy Clerk

CASE NO. 93,077

PETITIONER'S AMENDED INITIAL BRIEF ON THE MERITS

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ATTORNEY GENERAL

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FLORIDA BAR NO. 325791

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ISSUE I

DID THE TRIAL COURT ERR BY ASSESSING SENTENCE POINTS FOR POSSESSION OF A FIREARM DURING THE COMMISSION OF A FELONY, WHERE THE FELONY WAS GRAND THEFT OF A FIREARM AND WHERE POSSESSION OF THE STOLEN FIREARM SERVED AS THE BASIS FOR THE ASSESSMENT? . . . . .	5
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ISSUE II

WHETHER THE WRONGFUL IMPOSITION OF A PUBLIC DEFENDER'S LIEN CONSTITUTES FUNDAMENTAL ERROR WHICH MAY BE CHALLENGED ON DIRECT APPEAL WITHOUT HAVING BEEN PRESENTED TO THE TRIAL COURT, IN LIGHT OF SECTION 924.051(3), FLORIDA STATUTES (SUPP. 1996), AND AMENDED RULE 3,800(b), FLORIDA RULES OF CRIMINAL PROCEDURE? . . . . .	6
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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Ricky Allen Dodson, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The record on appeal consists of one volume. Pursuant to Rule 9.210(b), Fla. R. App. P. (1997), this brief will refer to a volume according to its respective designation within the Index to the Record on Appeal. A citation to a volume will be followed by any appropriate page number within the volume.

All emphasis through bold lettering is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The State charged Dodson with grand theft of a firearm. (I: 1-2) Dodson subsequently entered into a written plea agreement with the State. Under its terms, Dodson agreed to enter a plea of nolo contendere to the grand theft charge, and the sentence was to be at the court's discretion. (I: 12-13)

The trial court sentenced Dodson to three years incarceration, to be followed by three years probation. (I: 51-52,76-82) The court also imposed costs as follows:

Pay \$660.00 to the Clerk of Court on schedule of Probation Officer; said amount to include court costs, Crimes Compensation Trust Fund fee, Public Defender fee and statutory fees. The court places a \$660.00 lien against you for court costs and fees. You may perform community service work in lieu of payment at the rate of minimum hourly wage. (I: 52)

At sentencing, the court made the following oral pronouncement with respect to costs imposed:

...The court will impose costs of this action of \$660.00 and I will allow community service work for costs and I will require that he pay \$50 a month cost of supervision. I'll waive that supervision cost for 90 days after he has been released from incarceration in order to allow him to secure employment in order to pay the cost of supervision. Any questions?

[Defense Counsel]: No, your Honor. (I: 63)

The district court held that assessment of eighteen points for possession of a firearm during the commission of the offense was improper.

The district court certified a question of great public importance:

WHETHER THE WRONGFUL IMPOSITION OF A PUBLIC DEFENDER'S LIEN CONSTITUTES FUNDAMENTAL ERROR WHICH MAY BE CHALLENGED ON DIRECT APPEAL WITHOUT HAVING BEEN

PRESENTED TO THE TRIAL COURT, IN LIGHT OF SECTION  
924.051(3), FLORIDA STATUTES (SUPP. 1996), AND AMENDED  
RULE 3,800(b), FLORIDA RULES OF CRIMINAL PROCEDURE?

SUMMARY OF ARGUMENT

ISSUE I. The State, in light of this Court's recent opinion in White v. State, 23 Fla. L. Weekly S311 (Fla. June 12, 1998), abandons its argument on this issue.

ISSUE II. The State adopts and by reference incorporates its argument in Matke v. State, 23 Fla. L. Weekly D469 (Fla. 1st DCA February 13, 1998), rev. pending, No. 92,476 (Fla. March 4, 1998), on this certified question of great public importance. The State is separately moving for consolidation with Matke.

ARGUMENT

ISSUE I

DID THE TRIAL COURT ERR BY ASSESSING SENTENCE POINTS FOR POSSESSION OF A FIREARM DURING THE COMMISSION OF A FELONY, WHERE THE FELONY WAS GRAND THEFT OF A FIREARM AND WHERE POSSESSION OF THE STOLEN FIREARM SERVED AS THE BASIS FOR THE ASSESSMENT?

The State, in light of this Court's recent decision in White v. State, 23 Fla. L. Weekly S311 (Fla. June 12, 1998), abandons its argument on this issue.



ISSUE II

WHETHER THE WRONGFUL IMPOSITION OF A PUBLIC DEFENDER'S LIEN CONSTITUTES FUNDAMENTAL ERROR WHICH MAY BE CHALLENGED ON DIRECT APPEAL WITHOUT HAVING BEEN PRESENTED TO THE TRIAL COURT, IN LIGHT OF SECTION 924.051(3), FLORIDA STATUTES (SUPP. 1996), AND AMENDED RULE 3,800(b), FLORIDA RULES OF CRIMINAL PROCEDURE?

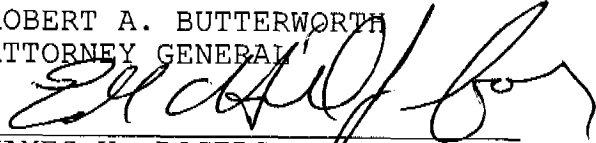
This issue is presently pending before this Court in Matke v. State, 23 Fla. L. Weekly D469 (Fla. 1st DCA February 13, 1998), rev. pending, No. 92,476 (Fla. March 4, 1998). The State adopts and by reference incorporates its argument in Matke on this point and asks that this case be consolidated with Matke for purposes of appeal.

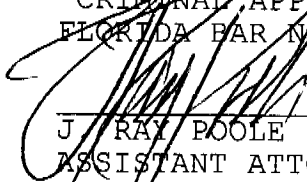
CONCLUSION

Based on the foregoing, the State respectfully submits the certified question should be answered in the negative, the decision of the District Court of Appeal should be disapproved, and the sentence entered in the trial court should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
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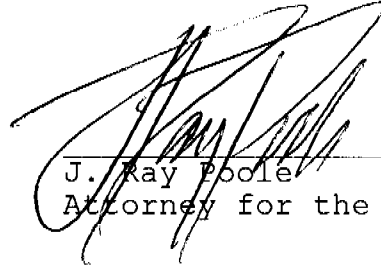
  
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[AGO# L98-1-6102]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S AMENDED INITIAL BRIEF ON THE MERITS has been furnished by U.S. Mail to Glen P. Gifford, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 2ND day of July, 1998.



\_\_\_\_\_  
J. Ray Poole  
Attorney for the State of Florida

[A:\DODSONBI.WPD --- 7/2/98,1:26 pm]