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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :

Petitioner, :

v. : CASE NO. 93,077

RICKY DODSON, :

Respondent. :

_____/

ANSWER BRIEF OF RESPONDENT

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	)	
Petitioner,	)	
v.	)	CASE NO. 93,077
RICKY ALAN DODSON,	)	
Respondent.	)	

ANSWER BRIEF OF RESPONDENT[1]

STATEMENT OF THE CASE AND FACTS

The state has presented an accurate rendition of the relevant facts. Respondent adds that because the trial court lumped the public defender lien and unspecified court costs into a $660 assessment, the district court found "it impossible to segregate the amount of the public defender's fee from the discretionary costs." Dodson v. State, 23 Fla. L. Weekly D1044 (1st DCA April 22, 1998).

[1]The undersigned counsel certifies that, apart from the two headings in bolder type on this page, which are in 14-point CG Times, the font used in this brief is 12-point Courier New.

SUMMARY OF THE ARGUMENT

In accord with the state's adoption of its argument in State v. Matke, Fla.Sup.Ct. No. 92,476, respondent adopts the argument of the respondent in that case. Respondent adds only that, to the extent the opportunity to file a motion to correct sentencing error under Florida Rule of Criminal Procedure 3.800(b) provides notice and an opportunity to be heard, it does so only as to cost assessments sufficiently identified to be challenged as unauthorized. In this case, the imposition of a $660 assessment, encompassing a public defender fee and other unnamed costs, provided insufficient notice to make the procedure in Rule 3.800(b) a meaningful opportunity to be heard.

Additionally, this Court has recently stated that "[a] sentence that patently fails to comport with statutory or constitutional limitations is by definition 'illegal.'" State v. Mancino, 23 Fla. L.Weekly S301, S303 (June 1, 1998). Also, the Criminal Appeals Reform Act notwithstanding, the Second DCA has recently recognized its inherent power to correct serious, patent sentencing errors when it has jurisdiction through preserved or fundamental error. Denson v.State, 23 Fla. L. Weekly D1216 (2d DCA May 1, 1998). The failure to identify the source of cost assessments is a serious violation of due process of law, which may be addressed initially on appeal.

ARGUMENT

IMPOSITION OF A COST ASSESSMENT WHICH INCLUDES A PUBLIC DEFENDER FEE AND OTHER UNIDENTIFIED ASSESSMENTS IN UNSPECIFIED AMOUNTS CONSTITUTES ERROR WHICH MAY BE ADDRESSED INITIALLY ON APPEAL.

In response to the state's adoption of its argument in State v. Matke, Fla.Sup.Ct. No. 92,476, respondent adopts the argument made by the respondent in that case. Moreover, respondent does not oppose consolidation, so long as the additional argument made below is considered, and the result as to the separate sentencing issue resolved by the district court, which the state does not challenge in this Court, remains unchanged.

Respondent notes that in Matke the state has submitted, as supplemental authority, Hyden v. State, 23 Fla. L. Weekly D1342 (4th DCA June 3, 1998). In Hyden the court stated that the availability of a motion to correct sentencing error under Rule 3.800(b) rectified any defect in notice and opportunity to be heard upon imposition of costs during a sentencing hearing:

> Assuming that prior to the sentence a defendant is not given notice of the state's intent to impose costs and a public defender's fee, once the fees are imposed in the sentence, the defendant surely has notice of them. If the defendant contests either the ability to pay such fees or the amount, he or she can file a motion to correct the sentence, pursuant to Rule 3.800(b), contesting the imposition and requesting a hearing.

Id. at D1343.

To the extent the opportunity to file a motion to correct

sentencing error under Florida Rule of Criminal Procedure 3.800(b) provides notice and an opportunity to be heard, it does so only as to cost assessments sufficiently identified to be challenged as unauthorized or excessive. The imposition in this case of a $660 assessment, encompassing an unspecified public defender fee and other unspecified costs, provided insufficient notice to make the procedure in Rule 3.800(b) a meaningful opportunity to be heard. The defendant can contest the amount of a public defender fee, or the legality of costs, only if these individual assessments are identified.

Additionally, this Court has recently stated that "[a] sentence that patently fails to comport with statutory or constitutional limitations is by definition 'illegal.'" State v. Mancino, 23 Fla. L. Weekly S301, S303 (June 1, 1998). Also, the Criminal Appeals Reform Act notwithstanding, the Second DCA has recently recognized its inherent power to correct serious, patent sentencing errors when it has jurisdiction through preserved or fundamental error. Denson v.State, 23 Fla. L. Weekly D1216 (2d DCA May 1, 1998). The failure to identify the source of cost assessments is a serious violation of due process of law, making the issue one which may be addressed initially on appeal. Under the fact of this case, the certified question should be answered in the affirmative.

CONCLUSION

Based on the arguments contained herein and the authorities cited in support thereof, respondent requests that this Honorable Court answer the certified question in the affirmative and approve the decision of the district court.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to James W. Rogers, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, FL, this date, July 21st, 1998.

Respectfully submitted
& Served,

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