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**FILED**

SID J. WHITE

**JUL 31 1998**

CLERK, SUPREME COURT

By Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

<p>GARY L. DOLES,          Petitioner,          v.          STATE OF FLORIDA,          Respondent.</p>
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CASE NO. 93,232

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as the State.

Petitioner, Gary L. Doles, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

STATEMENT OF THE CASE AND FACTS

The State agrees with the Petitioner's Statement of the case and facts.

SUMMARY OF ARGUMENT

The State recognizes that this Court's decision in White v. State, 23 Fla. L. Weekly S311 (Fla. June 12, 1998) and Galloway v. State, 23 Fla. L. Weekly S311 (Fla. June 12, 1998), although contrary to the plain language of the controlling statute, nevertheless controls the outcome of the instant case. The decision of the District Court must therefore be reversed and the cause remanded for resentencing.

ARGUMENT

ISSUE I

DID THE TRIAL COURT ERR IN ASSESSING EIGHTEEN POINTS TO THE SENTENCING GUIDELINES FOR THE POSSESSION OF A FIREARM DURING THE COMMISSION OF A FELONY?(Restated)

The Petitioner contends that the First District Court erred in affirming the trial court's inclusion of eighteen points on his sentencing guide line score sheet following his conviction for possession of a firearm by a convicted felony.

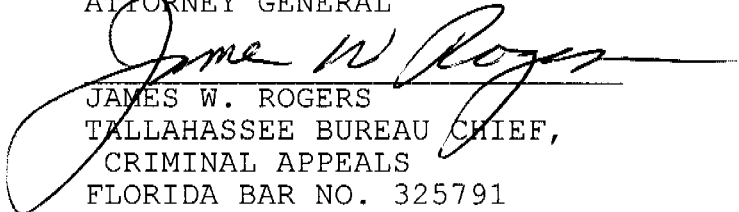
The State acknowledges resolution of this issue contrary to the position adopted below in this Court's recent decisions in Galloway v. State, 23 Fla. L. Weekly S311 (Fla. June 12, 1998) and White v. State, 23 Fla. L. Weekly S311 (Fla. June 12, 1998), but respectfully maintains its position that those decisions are contrary to the plain language of the statute in which the Florida Legislature explicitly mandated that eighteen points be assessed for possession of a firearm during the commission of a felony. Accordingly, based upon Galloway and White, this Court must therefore reverse the decision of the First District Court of Appeal below.


CONCLUSION

Based on the foregoing case law of this Court, the State respectfully submits the decision of the District Court of Appeal must be reversed and the cause remanded for resentencing.

Respectfully submitted,

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[AGO# L98-1-6912]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S ANSWER BRIEF ON THE MERITS has been furnished by U.S. Mail to Fred Parker Bingham, II, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 31st day of July, 1998.

*Giselle Lyles Rivera*  
Giselle Lyles Rivera  
Attorney for the State of Florida

[C:\USERS\CRIMINAL\PLEADING\98106912\DOLES-BA.WPD --- 7/31/98,9:09 am]



# APPENDIX

L 97-1-3300

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IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

GARY L. DOLES,  
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

v.

CASE NO. 97-895

STATE OF FLORIDA,  
Appellee.

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Opinion filed June 1, 1998.

An appeal from the Circuit Court for Bay County.  
Don Sirmons, Judge.

Nancy A. Daniels, Public Defender, and Fred Parker Bingham, II,  
Assistant Public Defender, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General, and Giselle Lylen  
Rivera, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED. See Scott v. State, 700 So. 2d 470 (Fla. 1st DCA 1997), review granted, (Fla. Feb. 5, 1998, No. 91,378); Ramirez v. State, 677 So. 2d 95 (Fla. 1st DCA 1996); State v. Scott, 692 So. 2d 234 (Fla. 5th DCA (1997)); White v. State, 689 So.2d 371, 372 (Fla. 2d DCA), review granted, 696 So. 2d 343 (Fla. 1997).

We certify that the decision in this case conflicts with the decisions in State v. Walton, 693 So. 2d 135 (Fla. 4th DCA 1997), review granted, 698 So. 2d 849 (Fla. 1997), and Galloway v. State, 680 So. 2d 616 (Fla. 4th DCA 1996), on the same point of law.

BARFIELD, C.J., JOANOS and WOLF, JJ., CONCUR.