IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

RANDY LAVERN SPENCER,

Respondent.

CASE NO. 93,795

PETITIONER'S INITIAL BRIEF ON THE MERITS

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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, Randy Lavern Spencer, 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 symbol "I" will refer to the one volume record on appeal. Each symbol will be followed by the appropriate page number in parentheses.

The font used to type this brief is 12 point Courier New.

STATEMENT OF THE CASE AND FACTS

Respondent was indicted for First Degree Murder on August 10, 1991. (I.4). On March 5, 1992, respondent entered a guilty plea to second degree murder, and the trial court sentenced him to a term of twenty-two years in prison with a three year minimum mandatory. (I.1). Respondent has filed numerous postconviction motions in the circuit court including a Motion To Correct Illegal Sentence filed on March 7, 1995, an Amended Motion To Correct Illegal Sentence filed on April 24, 1995, a Motion For Correction of Sentence For Jail Time Credit filed on May 12, 1997, a Motion To Amend Motion To Correct Illegal Sentence filed on May 21, 1997, a Motion for Rehearing filed on May 28, 1997, and Defendant’s

Successive Motion To Correct Illegal Sentence With Supporting Affidavit filed on June 26, 1997. (I.5).

On December 24, 1997, respondent filed a motion to correct illegal sentence claiming that the trial court could not impose the three-year minimum mandatory because the indictment did not allege that he possessed the firearm.[1] (I.1-2). The circuit court issued an order dismissing respondent's motion, stating that:

> This Court, having examined the above-styled Motion of the Defendant filed on the 24th day of December, 1997, finds the following:
>
> Defendant has previously filed the following Motions attacking the above numbered judgment/sentence: 1) "Motion To Correct Illegal Sentence" filed on 3/7/95, 2) "Amended Motion To Correct Illegal Sentence" filed 4/24/95, 3) "Motion For Correction of Sentence For Jail Time Credit" filed 5/12/97, 4) "Motion To Amend Motion To Correct Illegal Sentence" filed 5/21/97 5) "Motion for Rehearing" filed 5/28/97, and 6) "Defendant's Successive Motion To Correct Illegal Sentence With Supporting Affidavit" filed on June 26, 1997.
>
> In response to the above-listed motions, the Court has rendered the following orders: 1) The Court denied "Motion To Correct Illegal Sentence" in an Order rendered 4/28/95, the DCA affirmed this "Order Denying Motion to Correct Illegal Sentence" in an opinion filed 12/15/95. 2) The Court granted Defendant's "Motion For Correction of Sentence For Jail Time Credit" in an Order rendered 5/19/97. 3) The Court denied Defendant's "Motion To Amend Motion To Correct Illegal Sentence" in an Order rendered 6/9/97. 4) The Court denied "Motion for Rehearing" in an Order rendered 6/9/97. 5) The Court denied ""Defendant's Successive Motion To Correct Illegal Sentence With Supporting Affidavit" in an Order entered 7/24/97.

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[1] The indictment states that "RANDY LAVERNE SPENCER ... did shoot the said SHERRELL LASHAUN QUEEN with a firearm thereby inflicting in and upon SHERRELL LASHAUN QUEEN mortal wounds and injuries[.]" (I.4).

> There are no new allegations in the present rule 3.800 motion which warrant the Court's consideration of yet another successive motion. Furthermore, this Court will not entertain any further pro se attacks upon Defendant's 1992 judgment and sentence. See Wareham v. State of Florida, 678 So.2d 432 (Fla. App. 5 Dist. 1996).
>
> For the foregoing reasons, the Motion is **DISMISSED.**

(I.5).

Respondent appealed the circuit court's decision to the First District Court of Appeal. The First District issued an opinion stating that:

> Spencer appeals from an order denying his motion to correct an illegal sentence filed pursuant to Florida Rule of Criminal Procedure Rule 3.800(a). We determine that the trial court properly denied the requested relief. *See State v. Mancino*, 705 So. 2d 1379, 1381 (Fla. 1998). We do, however, find that the trial court did not follow the proper procedures when it determined that it would not entertain any further pro se challenges to Spencer's 1992 conviction and sentence. Prior to the imposition of sanctions, the trial court must issue an order to show cause which initiates a separate proceeding independent of the 3.800 action.1
>
> The trial court received Spencer's motion to correct an illegal sentence on December 24, 1997; it issued an order denying the motion on January 6, 1998. Within the order denying the motion, the court referenced six postconviction motions Spencer had previously filed challenging his 1992 sentence. The court further found the instant motion to have been successive, and it imposed the sanction concerning any further pro se challenges to Spencer's 1992 conviction and sentence. The trial court, however, neither issued an order to show cause why the sanction should not be imposed nor gave appellant any notice of the proposed sanction.2 In his brief on appeal from the rule 3.800 decision, appellant challenges the imposition of sanctions.
>
> Courts may, upon a demonstration of egregious abuse of the judicial process, restrict parties from filing pro se pleadings with the court. *See, e.g.*, *Attwood v. Singletary*, 661 So. 2d 1216 (Fla. 1995); *Attwood v. Eighth Circuit Court*, 667 So. 2d 356 (Fla. 1st DCA 1995). Such a sanction can be imposed at the trial level as well as the appellate level. *See Bivens v. State*, 23 Fla. L. Weekly D412 (Fla. 2d DCA Feb. 4, 1998); *Wareham v. State*,

678 So. 2d 432 (Fla. 5th DCA), *rev. denied*, 686 So. 2d 583 (Fla. 1996).

In *Martin v. Circuit Court, Seventeenth Judicial Circuit*, 627 So. 2d 1298 (Fla. 4th DCA 1993), where the chief judge of a circuit court issued an administrative order prohibiting a pro se litigant from filing further "lawsuits, petitions, and appeals," the fourth district held that the circuit court could not issue such an order without first giving the pro se litigant notice and an opportunity to be heard. *See id.* at 1299-1300. Nevertheless, in *Huffman v. State*, 693 So. 2d 570, 571 (Fla. 2d DCA 1996), the Second District Court of Appeal, after acknowledging the procedural due process rights of a pro se litigant recognized in *Martin*, held that a trial court could prohibit a prisoner from filing further pro se attacks on a particular conviction or sentence without affording the prisoner notice or an opportunity to be heard prior to the imposition of the sanction. The court in *Huffman* reasoned that because the sanction imposed did not completely bar the prisoner's access to the courts on other matters, it "did not rise to the level that requires the due process safeguards discussed in *Martin*." *Id.* at 571.

We find ourselves in disagreement with the second district's opinion in *Huffman*, and we certify conflict with that decision. The sanction imposed in Spencer's case totally cuts off his right of further access to the court system regarding his 1992 conviction and sentence. Fundamental fairness and the necessity for the creation of a complete record require that a party be given reasonable notice prior to the imposition at the trial level of this extreme sanction. *Cf.* Fla. R. App. P. 9.410 (1998) (requiring 10 days' notice prior to imposition of sanctions at the appellate level). As a Michigan appellate court has observed:

> Sanctions such as filing limits ... may interfere with the right of access to the courts and with the ability to assert constitutionally protected liberty interests. Therefore, they may not be imposed upon pro se prisoner litigants without first affording them rudimentary due process. At a minimum, such due process must include notice [and] an opportunity to be heard....

People v. Herrera, 514 N.W.2d 543, 546 (Mich. Ct. App. 1994) (internal citations omitted).

We, therefore, reverse that portion of the order which provides that Spencer not be allowed to file any further

> pro se challenges to his 1992 conviction and sentence. If the trial court on remand still feels that the sanction is appropriate, then it shall issue an order to show cause why the sanction should not be imposed, allowing appellant a reasonable time to respond. In all other respects, the order of the trial court is affirmed. (ALLEN and DAVIS, JJ., concur.)

Spencer v. State, 23 Fla. L. Weekly D1898 (Fla. 1st DCA August 13, 1998)(footnotes omitted).

SUMMARY OF ARGUMENT

This Court should reverse the First District Court of Appeal's decision to reverse the portion of the circuit court's order which prohibited respondent from filing additional pro se challenges to his 1992 conviction and sentence. It was not necessary for the circuit court to issue an order for respondent to show cause why the restriction should not be imposed because the circuit court's order did not prohibit respondent from filing a motion for rehearing, an appeal to the First District, a good faith motion signed by a member of the Florida Bar, or a challenge to a different judgment and sentence. Therefore, respondent's access to the court was not "totally cut off," and the restriction did not rise to the level that required the due process safeguards as set forth by the First District. Accordingly, this Court should reverse the decision of the First District and affirm the circuit court's order imposing the restriction.

ARGUMENT

ISSUE I

WHETHER THE CIRCUIT COURT MAY SANCTION A DEFENDANT IN THE FORM OF PROHIBITING THE DEFENDANT FROM FILING ANY FURTHER PRO SE POSTCONVICTION CHALLENGES TO HIS 1992 JUDGMENT AND SENTENCE WITHOUT ISSUING AN ORDER TO SHOW CAUSE?

Respondent has filed numerous postconviction motions challenging his 1992 murder conviction, and the circuit court issued an order prohibiting appellant from filing any further pro se challenges to that conviction and sentence. (I.5). The First District Court of Appeal affirmed the circuit court's order denying respondent's latest motion to correct illegal sentence; however, the First District reversed the portion of the order prohibiting respondent from filing additional pro se challenges to his conviction. The First District held that the sanction cut off respondent's access to the court system, and "[f]undamental fairness and the necessity for the creation of a complete record require that a party be given reasonable notice prior to the imposition at the trial level of this extreme sanction." Spencer v. State, 23 Fla. L. Weekly D1898 (Fla. 1st DCA August 13, 1998). The First District, therefore, reversed that portion of the order and held that the circuit court could on remand issue an order to show cause why the sanction should not be imposed giving respondent a reasonable time to respond. Id. However, the First District certified conflict with the Second District's decision in Huffman v. State, 693 So. 2d 570 (Fla. 2d DCA 1996).

Filing successive and frivolous motions and appeals disrupts the activity of the court and causes worthy cases to be delayed. See Mobley v. State, 492 So. 2d 734, 735 (Fla. 5th DCA 1986)("One is not permitted to litigate the same issues over and over because that activity disrupts the courts and causes worthy cases and persons to be delayed in their litigation."), reinstatement denied, 497 So.2d 1217 (Fla. 1986). Therefore, the court may restrict a party from filing further pro se pleading with the court. Attwood v. Singletary, 661 So.2d 1216, 1217 (Fla. 1995)(finding that prohibiting Attwood from filing additional pro se pleadings furthers the right of access to the court "because it permits us to devote our finite resources to the consideration of legitimate claims of persons who have not abused the process.").

The First District required that before such a prohibition could be imposed the circuit court must conduct a separate proceeding issuing an order to show cause and allowing the defendant to respond before precluding a defendant from filing further pro se pleadings when the defendant has abused his right of access to the court. However, the Second District found no due process violation in imposing like sanctions without providing notice an opportunity to be heard. The Second District, affirming the circuit court's order prohibiting Huffman from filing further pro se attacks on his 1986 convictions, stated:

> We have considered whether the trial court should have afforded Huffman notice and a right to be heard prior to issuing its order. See Martin v. Circuit Court, Seventeenth Judicial Circuit, 627 So.2d 1298, 1300 (Fla. 4th DCA 1993). While we can envision some circumstances in which prior notice and an opportunity to be heard

> would be required, we find no denial of due process in this case. **On this point we deem it significant that the restriction imposed by the trial court applied only to further attacks on a specific conviction and sentence. It did not bar Huffman's access to the court on other matters. Nor did it restrict his right to file for a rehearing or this appeal. Consequently, the restriction imposed did not rise to the level that requires the due process safeguards discussed in Martin.**

Huffman at 571 (emphasis added).[2]

Likewise, in the case at bar, the circuit court's order prevented respondent from filing future attacks to his 1992 conviction and sentence only. The order did not prohibit respondent from appealing the circuit court's ruling, or filing a motion for rehearing to challenge the imposition of the restrictions on his ability to file future challenges to his conviction and sentence. Nor did the order prohibit a licensed attorney from filing a good faith postconviction motion challenging respondent's 1992 conviction and sentence. Thus, the order did not "totally cut off" respondent's access to the court, and like Huffman, did not rise to level that required the due process safeguards as set forth by the First District. Moreover, the First District's requirement that respondent be provided notice and opportunity to be heard does not aid respondent. Respondent is already aware or should be aware that he has previously challenged his 1992 conviction on numerous occasions, and respondent could file a motion for rehearing if he had grounds to object to the

[2] Additionally, this Court barred Huffman from filing further pro se pleadings. Huffman v. Singletary, Case No. 90,939.

order. Accordingly, the circuit court's order prohibiting respondent from filing further pro se challenges to his 1992 conviction and sentence did not violate the concerns of due process, and should be affirmed.

CONCLUSION

Based on the foregoing, the State respectfully submits that the decision of the District Court of Appeal reported at 23 Fla. L. Weekly D1898 should be disapproved, and the order prohibiting respondent from filing addition attacks on his 1992 conviction and sentence entered in by the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S INITIAL BRIEF ON THE MERITS has been furnished by U.S. Mail to Randy Lavern Spencer, DOC # 541845 I-3102, Hamilton Correctional Institution, Route 1 Box 1360, Jasper, FL 32052, this ____ day of September, 1998.

_____
Trisha E. Meggs
Attorney for the State of Florida

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