IN THE SUPREME COURT OF FLORIDA.

LEOTIS SMITH)
)
Petitioner,)
vs.) DCA CASE NO. 94,703
)
STATE OF FLORIDA,)
)
Appellee.)
)

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S MERIT BRIEF

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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TABLE OF CONTENTS

TABLE OF CITATIONS

OTHER AUTHORITIES CITED

STATEMENT OF THE CASE AND FACTS

The Petitioner was charged by information with second degree murder with a deadly weapon (§§ 782.04(2) & 775.087, Fla. Stat.) (Vol. II, R 37)[1]. It was alleged that the offense occurred on May 18, 1996. (Vol. II, R 37); (SR Vol. II, T 87). The State filed a notice of its intent to seek enhanced punishment under the habitual felony offender statute, section 775.084, Fla. Stat. (Vol. II, R 70). The case proceeded to a jury trial before the Honorable Richard F. Conrad[2] after which the jury returned a verdict finding the Petitioner guilty as charged in the information. (Vol. II, R 76-79); (SR Vol. IV, T 534-535).

The case proceeded to sentencing on August 20, 1997, once again before the Honorable Richard F. Conrad. (Vol. I, S 1). The Petitioner scored 382 total sentencing points. (Vol. II, R 127-129). Of that 382 points, the Petitioner was assessed 240 victim injury points and 116 primary offense points for the instant offense alone. (Vol. II, R 127-129). Petitioner's guideline range was 22.12 years to 36.87 years. (Vol. II, R 127-129). At

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[1](Vol. II, R) denotes the record of the general pleadings. (Vol. I, S) denotes the transcript of the sentencing hearing. (SR Vol.) denotes the various volumes of the supplemental record on appeal which include the transcripts of the trial proceeding.

[2]. The record reveals that Judge Whitehead substituted for Judge Conrad simply to take the verdict. There was no objection to this substitution. (SR Vol. IV, T 533).

the sentencing hearing, the state argued that the trial court should sentence the Petitioner to life in prison. (Vol. I, S 2-4). The state argued that the court could find that the Petitioner qualified as a habitual felony offender. (Vol. I, S 2-4, 6-8). In its attempt to establish the requisite predicate felonies necessary for a defendant to qualify as a habitual felony offender under section 775.084, the State presented copies of certified judgements and sentences for case numbers CR94-8053 (trafficking in cocaine); CR94-9991(battery on a law enforcement officer); and CR96-13601(battery on a law enforcement officer). (Vol. I, S 6); (Vol. II, R 131-144). The judgements adjudicating the Petitioner guilty in CR94-8053 and CR-9991 were rendered on the same day, October 31, 1994, by the same judge, apparently at the same time. (Vol. II, R 131-140). The judgment adjudicating the Petitioner guilty in CR96-13601 was rendered on February 21, 1997, after the date of the offense in the instant case. (Vol. II, R 141-144). There was no objection by the defense to the introduction of the judgements and sentences. (Vol. I, S 8). Relying on these prior convictions, the state contended that the Petitioner qualified as a habitual felony offender and was a danger to the public. (Vol. I, S 8). The court ruled that the Petitioner met the criteria under section 775.084, he classified

the Petitioner as a habitual felony offender, adjudicated him guilty and sentenced him to life in prison as a habitual felony offender. (Vol. I, S 21-22); (Vol. II, R 122-125). A timely notice of appeal was filed and the office of the public defender was appointed for the purpose of this appeal. (Vol. II, R 151, 140).

On appeal, Petitioner argued that the he did not qualify as a habitual felony offender and that it was fundamental error for the trial court to sentence as such. The Fifth District Court of Appeal issued a per curiam affirmance citing the case of Maddox v. State, 708 So.2d 617 (Fla. 5th DCA 1998), *rev. granted*, 718 So.2d 169 (Fla. 1998), as controlling authority for the affirmance. Smith v.State, 721 So.2d 455 (Fla. 5th DCA 1998)(Appendix A). Petitioner filed a notice to invoke discretionary jurisdiction of the Court on January 8, 1999. By order of this Court dated March 16, 1999, this Court accepted jurisdiction and dispensed with oral argument. This appeal follows.

SUMMARY OF ARGUMENT

The trial court erred in sentencing the Petitioner to life in prison as a habitual offender because the Petitioner did not meet the statutory criteria required by section 775.084(1)(a). The State relied on three felony convictions as the predicate offenses required by section 775.084. Two of these convictions were entered on the same day and the third conviction occurred after the date of the offense for the conviction upon which the Petitioner was being sentenced. A habitual offender sentence may not be predicated upon prior convictions that were entered on the same date and it may not be predicated on a conviction which occurred after the current offense for which the defendant is being sentenced. In spite of the fact that there was no objection below the Fifth District Court of Appeal should have reached the merits of the issue presented on the basis that it was fundamental error as it constitutes an illegal sentence.

ARGUMENT

ISSUE I

WHETHER THE FIFTH DISTRICT COURT OF APPEAL ERRED IN REFUSING TO REACH THE MERITS OF THE CASE AND FINDING THE ISSUE UNPRESERVED UNDER MADDOX WHERE THE TRIAL COURT ILLEGALLY SENTENCED THE PETITIONER TO LIFE IN PRISON AS A HABITUAL FELONY OFFENDER WHERE THE PETITIONER DID NOT QUALIFY AS A HABITUAL OFFENDER.

On appeal, the Petitioner raised one issue alleging that the trial court erred in sentencing him to life in prison as a habitual felony offender where he did not meet the statutory requirements necessary to qualify as a habitual felony offender. Petitioner argued that the sentence was illegal and therefore fundamental error. The Fifth District Court of Appeal issued a per curiam affirmance of the lower court's holding citing to Maddox v. State, 708 So.2d 617 (Fla. 5th DCA 1998), *rev. granted*, 718 So.2d 169 (Fla. 1998), which is currently pending review by this Court. In Maddox, in an en banc opinion, the Fifth District Court of Appeal abolished the concept of fundamental sentencing errors holding that no sentencing error would be reviewable absent preservation by an objection or a motion pursuant to 3.800(b). Id.; §924.051, Fla. Stat. (1996). By affirming on the authority of Maddox, the Fifth District Court of Appeal refused to reach the merits of the issue presented. This was error.

In the instant case, after a jury trial, the Petitioner was convicted of second degree murder with a deadly weapon and was sentenced to life in prison as a habitual felony offender. The trial court erred in classifying the Petitioner as a habitual felony offender because the Petitioner did not meet the statutory criteria. Section 775.084(1)(a), Florida Statutes (1995) provides that,

> (1)(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(a), if it finds that:
> 1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses;
> 2. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a felony or other qualified offense whichever is later;
> 3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13 relating to the purchase or the possession of a controlled substance;
> 4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph; and
> 5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in

any postconviction proceeding.

§775.084(1)(a), Fla. Stat. (1995). Subsection (5) of that same statute further provides:

> (5) In order to be counted as a prior felony for purposes of sentencing under this section, the felony must have resulted in a conviction sentenced separately prior to the current offense and sentenced separately from any other felony conviction that is to be counted as a prior felony.

§775.084(5), Fla. Stat. (1995).

In the instant case, the state relied on three convictions to establish that the Petitioner met the above criteria. (Vol. I, S 6); (Vol. II, R 131-144). First, the state presented the judgements and sentences in case numbers CR94-8053 and CR94-991. (Vol. II, R 131-140). These reflect that the Petitioner was convicted of two felonies, trafficking in cocaine and battery on a law enforcement officer. (Vol. II, R 131-140). However, both of these convictions occurred on the same date. (Vol. II, R 131-140). The record reveals that the judgements and sentences were rendered on October 31,1994 and were signed by the same judge. (Vol. II, R 131-140). A habitual felony offender sentence cannot be based on prior convictions that were entered on the same date. Ford v. State, 652 So.2d 1236 (Fla. 1st DCA 1995); Prince v. State, 684 So.2d 850 (Fla. 2d DCA 1996); Alfonso v. State, 659

So.2d 478 (Fla. 4th DCA 1995); §775.084(5), Fla. Stat. (1995). Sequential convictions are required. Id. Second, the state relied on the Petitioner's conviction for battery on a law enforcement officer in case number CR96-13601. (Vol. I, S 6); (Vol. II, R 141-144). The record is clear that the judgement adjudicating the Petitioner guilty in CR96-13601 was rendered on February 21, 1997, while the date of the offense for which the Petitioner was being sentenced was May 18, 1996. (Vol. II, R 37, 141-144). Consequently, the conviction in CR96-13601 occurred after the offense occurred in the instant case. A habitual felony offender sentence cannot be predicated on an offense or conviction which occurred *after* the current offense for which the defendant is being sentenced. Rhodes v. State, 704 So.2d 1080 (Fla. 1st DCA 1997); §775.084(5), Fla. Stat. (1995).

In his initial brief, submitted to the Fifth District Court of Appeal, Petitioner acknowledged that there was no objection to this error below. However, Petitioner argued that the trial court's error in sentencing him to life as a habitual felony offender was fundamental error as it constituted an illegal sentence which may be addressed at any time. Davis v. State, 661 So.2d 1193 (Fla. 1995); Young v. State, 716 So.2d 280 (Fla. 2d DCA 1998). However, as already mentioned, the Fifth District

Court of Appeal issued a per curiam affirmance of the sentence citing to Maddox. Smith v. State, 721 So.2d 455 (Fla. 1998) *citing*, Maddox v. State, 708 So.2d 617 (Fla. 5th DCA), *rev. granted*, 718 So.2d 196 (Fla. 1998).

In Maddox, the Fifth District Court of Appeal in an *en banc* opinion determined that the Criminal Appeal Reform Act as codified in Section 924.051, Florida Statutes (1996)has abolished the concept of fundamental error in the sentencing context. From the date of the opinion, the court gave notice that no sentencing issue will be addressed on appeal by the Fifth District Court of Appeal unless preserved by a timely objection or a motion to correct the sentence and denial thereof. This interpretation of the criminal Appeal Reform act is legally and practically unsound.

Petitioner asserts that the Fifth District Court of Appeal erred in Maddox in concluding that the Criminal Appeal reform Act has eliminated the concept of fundamental error. To support its conclusion, the Fifth District merely referred to rule 9.140 of the Rules of Appellate Procedure which purports to limit the scope of appeal in criminal cases solely to those sentencing issues which have been preserved for appeal. Since there is no

exception explicitly mentioned in that rule for the concept of fundamental error, the Fifth District Court of Appeal concluded that by implication, the concept of fundamental error had effectively been abolished in the sentencing context. However, this inference is incorrect. Appellate review of fundamental error is, by its nature, an exception to the requirement of preservation. Thus, no rule of preservation can impliedly abrogate the fundamental error doctrine because the doctrine is an exception to every such rule. Bain v. State, 1999 WL 34708, (page 6) (Fla. 2d DCA January 29, 1999). Additionally, this inference that there is no such thing as fundamental sentencing error *must* be incorrect simply because of the sheer importance of the concept of fundamental error to our court system. As the Second District Court of Appeal aptly stated in Bain,

> [The] purpose [of the fundamental error doctrine] extends beyond the interests of a particular aggrieved party; it protects the interests of justice itself. It embodies the court's recognition that some errors are of such a magnitude that failure to correct them would undermine the integrity of our system of justice.

Bain, 1999 WL 34708 at 6. Consequently, the notion of fundamental error, even in the sentencing context, goes hand-in-hand with the notions of due process and fair play. Certainly, a

concept of such importance should not be excluded by inference, if at all.

Furthermore, the Fifth District Court of Appeal's interpretation of the Rules of Appellate Procedure is necessarily erroneous because if it were correct, then the rules themselves would be unconstitutional as eliminating a specifically recognized right that the legislature provided. When enacting the Criminal Appeal Reform Act, the legislature specifically recognized the continuing viability of the concept of fundamental error even in the sentencing context. Section 924.051(3), Florida Statutes (1996) provides:

> An appeal may not be taken from a judgment or order of a trial court unless a prejudicial error is alleged and is properly preserved *or, if not properly preserved would constitute fundamental error.* A judgment or sentence may be reversed on appeal only when an appellate court determines after a review of the complete record that prejudicial error occurred and was properly preserved in the trial court *or, if not properly preserved, would constitute fundamental error.* (emphasis added).

Once the legislature has recognized the continuing viability of the concept of fundamental error, an appellate court may not eliminate it. To do so would constitute judicial legislation and would be improper. *See,* Wyche v. State, 619 So.2d 231, 236 (Fla.

1993); Firestone v. News-Press Publishing Co., 538 So.2d 457, 460 (Fla. 1989); Brown v. State, 358 So.2d 1620 (Fla. 1978). Moreover, in Bain v. State, the Second District Court of Appeal recognized that there is a Constitutional right to appeal all final orders, including sentencing orders, and that while apparently the legislature may implement reasonable conditions upon this right, it may not thwart a litigant's legitimate appellate rights. Bain, 1999 WL 34708 at 2-3. Consequently, the Fifth District Court of Appeal's interpretation of the Rules of Appellate Procedure as not providing for review of unpreserved fundamental error, would in fact thwart the legitimate right to appeal and would thus be unconstitutional.

The type of fundamental error involved in the instant case is an illegal sentence. In considering the issue of fundamental error, the First District Court of Appeal concluded that illegal sentences constituted fundamental error for which no objection is necessary prior to granting appellate relief. In Sanders v. State, 698 So.2d 377 (Fla. 1st DCA 1997) the court was faced with an appeal from a defendant's conviction and sentence for the offense of sexual battery. The defendant had been sentenced to twenty years in prison followed by fifteen years probation which exceeded the statutory maximum for the crime of which he had been

convicted which was a second degree felony punishable by a term of imprisonment not exceeding fifteen years. Rejecting the state's contention that the issue had not been preserved for appeal by a proper objection, the court nevertheless granted relief. The court held that:

> [S]ection 924.051 does not preclude an appellate challenge to unpreserved sentencing error that constitutes fundamental error. Neal v. State, 688 So.2d 392 (Fla. 1st DCA 1997).
> The error asserted by the appellant in the present case must be classified as fundamental. The sentence for sexual battery is in excess of the statutory maximum for the offense and is therefore "illegal." [citations omitted]. An illegal sentence is regarded with such disdain by the law that it, unlike other trial court errors, may be challenged *for the first time* by way of collateral proceedings instituted even decades after such a sentence has been imposed .... The extraordinary provision made for remedying illegal sentences evidences the utmost importance of correcting such errors even at the expense of legal principles that might preclude relief from trial court errors of less consequence. In light of this, illegal sentences necessarily constitute fundamental error, and may therefore be challenged for the first time on direct appeal.

Sanders v. State, 698 So.2d 377 (Fla. 1st DCA 1997).

While the Sanders opinion concerned an illegal sentence as defined in Davis v. State -- one that exceeds the statutory

maximum, the illegal sentence in the instant case does not. However, it is nonetheless illegal. Davis v. State, 661 So.2d 1193 (Fla. 1995). Habitual offender sentences imposed upon nonqualifying defendant's were in the past routinely held to be illegal sentences. Grant v. State, 611 So.2d 110 (Fla. 5th DCA 1992). However, in Davis, this Honorable Court narrowly defined the term "illegal sentences" as those sentences which exceed the statutory maximum. Davis 661 So.2d 1193 (Fla. 1995); *See also* State v. Calloway 658 So.2d 983 (Fla. 1995). After Davis habitual offender sentences which did not exceed the statutory maximum were held to be unpreserved absent an objection below. Carter v. State, 704 So.2d 1068 (Fla. 5th DCA 1997) *contra* Young v. State,716 So.2d 280 (Fla. 2d DCA 1998). Recently, however, this Court has indicated that this definition of an "illegal sentence" is not as rigid as it has been interpreted. Hopping v. State, 708 So.2d 263 (Fla. 1998). In Hopping v. State, this Court held that where it can be determined without an evidentiary hearing that a sentence has been unconstitutionally enhanced it is an illegal sentence. Id. 2d at 265. While Hopping dealt with double jeopardy concerns it's holding appears to be applicable to sentences which exceed statutory and constitutional limitations

and are resolvable as a matter of law without an evidentiary hearing. Id. This is more readily apparent in this Court's recent opinion in State v. Mancino where it was held that a sentence which does not grant proper credit for time served is illegal. State v. Mancino, 23 Fla.L.Weekly S301 (Fla. June 11, 1998). In Mancino, this Court explained,

> As is evident from our recent holding in Hopping, we have rejected the contention that our holding in Davis mandates that *only* those sentences that facially exceed the statutory maximums may be challenged under a rule 3.800(a) as illegal.

Id. at S302. The Court further noted that, "A sentence that patently fails to comport with statutory or constitutional limitations is by definition 'illegal.'" Id. at S303.

In Nelson v. State, 719 So.2d 1230 (Fla. 1st DCA 1998),the First District Court of Appeal was faced with an issue extremely similar to the issue presented here in the instant case. In Nelson, the defendant argued for the first time on direct appeal that her habitual felony offender sentence for felony petit theft was illegal even though it did not exceed the non-habitual statutory maximum for the offense. Id. Recognizing the expanded definition of an illegal sentence as stated in State V Mancino, 714 So.2d 429 (Fla. 1998), the First District Court held that the

imposition of a habitual felony offender sentence where it should not be applied was an illegal sentence even where the term of imprisonment did not exceed the non-habitual statutory maximum for the offense. Id. The Nelson court additionally determined that as an illegal sentence it constituted fundamental error and was remediable on direct appeal even absent preservation below. Id. In so doing, the First District Court of Appeal stated,

> A divided fifth district recently held that there are no fundamental errors in the sentencing context. See Maddox v. State, 708 So.2d 617 (Fla. 5th DCA 1998). But the holding in Maddox cannot be reconciled with the opinion in Amendments to the Florida Rules of Appellate Procedure, 685 So.2d at 775, in which the supreme court clearly indicated that its 1996 amendments to Florida Rule of Appellate Procedure 9.140 were adopted in recognition of the legislature's prerogative to "reasonably condition the right to appeal upon the preservation of a prejudicial error or the assertion of a fundamental error." (Emphasis supplied). The construction of 9.140(d) applied in Maddox would obviously frustrate rather than recognize, this legislative intent. For this reason, and because the supreme court (1) has specifically recognized fundamental error in the sentencing context in cases such as Wood v. State, 544 So.2d 1004(Fla. 1989), (2) has held that illegal sentences may be corrected at any time, and (3) has provided no clear indication that fundamental error now applies only to trial errors, we disagree with Maddox and certify conflict between Maddox and our decision in the present case.

Id. at 1233.

In the instant case, as in Nelson, the Petitioner was erroneously sentenced as a habitual felony offender. In the instant case, as in Nelson, the sentence did not exceed the non-habitual statutory maximum for the crime with which the Petitioner was convicted. However, in the instant case, as in Nelson, the Petitioner's sentence as a habitual offender is nevertheless illegal as it satisfies the Mancino definition of an illegal sentence because it "fails to comport with statutory and constitutional limitations." Section 775.084, Florida Statutes plainly limits when a habitual felony offender sentence may be imposed by setting forth certain criteria for its imposition. The imposition of a habitual offender sentence on a person who does not meet this criteria exceeds the limitations of the habitual offender statute. Furthermore, the imposition of a habitual offender sentence upon one who does not qualify also exceeds constitutional limits of fundamental fairness and due process and thus further meets the Mancino definition of "illegal." Id. Consequently, in the instant case, as in Nelson, the imposition of a habitual offender sentence upon one who does not qualify was illegal. Nelson v. State, 719 So.2d 1230 (Fla. 1st DCA 1998); Young v. State,716 So.2d 280(Fla. 2d DCA 1998)(conflict certified

with the Fifth District Court of Appeal in Carter v. State, 704 So.2d 1068 (Fla 5th DCA 1997) regarding whether a habitual offender sentence imposed for a conviction which does not qualify for habitual offender treatment is illegal).

From both a practical standpoint as well as a sense of fairness and due process, Petitioner respectfully asserts that the First District Court of Appeal's approach in Nelson offers a more reasonable interpretation of the Criminal Appeal Reform Act than the Fifth District's approach in the instant case. The approach taken by the Fifth District Court of Appeal in Maddox is simply a waste of judicial resources. The court in Maddox admitted to this inefficiency when it observed that appellate courts were accustomed to simply correcting errors on appeal because it seemed "both right and efficient to do so" but that now the legislature was preventing them from doing this. Maddox, 708 So.2d at 621. The court went on to conclude, however, that in the court's opinion, there was little risk that a defendant would suffer an injustice because of this new procedure because if any of the sentencing was fundamentally erroneous and counsel failed to object or file a motion to correct the sentence the remedy of ineffective assistance of counsel would still be available. Id. The court then noted:

> It is hard to imagine that the failure to preserve a sentencing error that would formally have been characterized as "fundamental" would not support an "ineffective assistance" claim.

Id. Petitioner agrees that failure of trial counsel to properly preserve a sentencing error which is fundamental is per se ineffective assistance of counsel. However, the solution to this is not for the appellate court to deny relief and require the untrained defendant to proceed against his counsel on an ineffective assistance of counsel claim, but to recognize the issue that is apparent on the face of the record and grant relief as if it were a claim of ineffective assistance of counsel. Mizell v. State,716 So.2d 829(Fla. 3d DCA 1998). This Court has ruled in Combs v. State, 403 So.2d 418 (Fla. 1981) that if appellate counsel in a criminal proceeding honestly believes there is an issue of reasonably ineffective assistance of counsel in the trial or the sentencing phase before the trial court, that issue should be immediately presented to the appellate court that has jurisdiction of the proceeding so that it may be resolved in an expeditious manner by remand to the trial court and avoid unnecessary and duplicitous proceedings. This admonition has renewed meaning in light of the Criminal Appeal Reform Act. Certainly if the objective of the act was to promote efficiency

in the appellate process, and indeed the criminal justice system, then the approach to these errors even though unpreserved should be to allow, and in fact require, appellate court's to address fundamental and illegal sentencing issues on direct appeal when they are first presented. Otherwise the Criminal Appeal Reform Act serves only the purpose of requiring more hoops for an Appellant to jump through (i.e. post conviction proceedings) before being granted relief to fundamental errors. This would only serve to weaken the integrity of the criminal justice system.

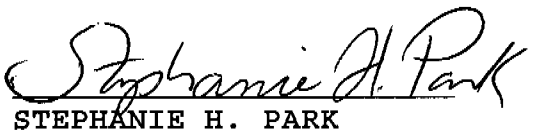
Consequently, from a legal standpoint as well as from a policy standpoint, the decision of the Fifth District Court of Appeal below should be found to be incorrect. While the Criminal Appeal Reform Act requires most sentencing errors to be preserved before an appellate court may grant relief, the concept of fundamental error particularly as it concerns an illegal sentence continues to be a viable issue on appeal notwithstanding the lack of objection. This Court should vacate the decision of the Fifth District Court of Appeal below, and reverse the trial court's imposition of a life sentence as a habitual felony offender and remand to the trial court for resentencing; or, in the alternative, Petitioner respectfully requests that this Honorable

Court quash the per curiam affirmance relying on Maddox and remand the matter with instructions for the District Court to decide the appeal on the merits.

CONCLUSION

Based on arguments and authorities cited herein, Petitioner respectfully requests that this Honorable Court vacate the decision of the Fifth District Court of Appeal below, and reverse the trial court's imposition of a life sentence as a habitual felony offender and remand the cause for resentencing; or, in the alternative, Petitioner respectfully requests that this Honorable Court quash the per curiam affirmance relying on Maddox and remand the matter with instructions for the Fifth District Court of Appeal to decide the appeal on the merits.

Respectfully submitted,
JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



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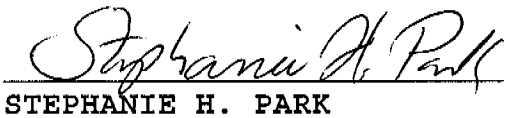
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert Butterworth, Attorney General, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, FL 32118, via his basket, at the Fifth District Court of Appeal, and mailed to Mr. Leotis Smith on this 12th day of April, 1999.



STEPHANIE H. PARK
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

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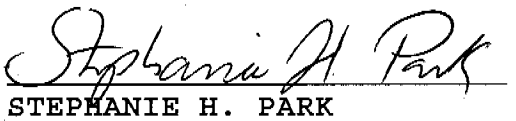

STEPHANIE H. PARK
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IN THE SUPREME COURT OF FLORIDA.

LEOTIS SMITH	)	
	)	
Petitioner,	)	
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APPENDIX

Appendix A -- Smith v. State, 721 So.2d 455 (Fla. 5th DCA 1998)