

IN THE SUPREME COURT OF FLORIDA

JOSEPH DUANE SAUCER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC95031

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent, the State of Florida will be referenced in this brief as Respondent or the State. Petitioner, Joseph Duane Saucer, will be referenced in this brief as Petitioner or by proper name.

The symbol "R" will refer to the record on appeal, and the symbol "S" will refer to the supplemental record on appeal; "IB" will designate the Initial Brief of Petitioner. Each symbol will be followed by the appropriate page number in parentheses.

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

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

The State agrees with Petitioner's statement of the case and facts, except:

1. Petitioner states that "[t]he special master did not expressly resolve the conflicting testimony, or, make a finding that the filing was brought with knowledge of false information." IB at 3. For clarity, the State notes that the special master specifically stated in his Report that:

5. The appellant's Amended Petition for Writ of Habeas Corpus included a representation that he made several request to Ms. Wilson to appeal his case: on December 3, 1995, December 12, 1995; and January 18, 1996.

6. These representations are not accurate, as evidenced by appellant's own testimony at the instant hearing.

(I.34). The Special Master discussed the findings of fact, and further stated:

25. The claim by the appellant that he repeatedly requested to Ms. Wilson that she appeal his case and that she agreed to do so was refuted by Ms. Wilson and by the lack of such a request or agreement in the plea form or on the record.

26. Having considered both the appellant's and Ms. Wilson's testimony, along with other testimony and evidence, it is concluded that no such requests to appeal were made by the appellant, and no representation to appeal the appellant's case were made by Ms. Wilson.

27. In correspondence sent by the appellant to the Public Defender's Office after his sentencing, there is no request to appeal the court's order on the motion to suppress.

28. There is, therefore, no evidence to suggest that the appellant made any request to appeal his case after he was sentenced but within 30 days of his sentencing.

(I.37-38).

2. Petitioner also claims the "State's motion for forfeiture of gain-time is not contained in the record on appeal before this Court. (IB at 4,7). However, this Court granted Petitioner's motion to supplement the record with Motion Regarding Sanctions pursuant to § 944.28(2)(a).

SUMMARY OF ARGUMENT

Due to the brevity of the State's Argument, the State has omitted the Summary of Argument.

ARGUMENT

ISSUE I

MAY THE GAIN-TIME FORFEITURE PROVISIONS OF SECTION
944.28(2)(a) APPLY IN CRIMINAL AND COLLATERAL
CRIMINAL PROCEEDINGS? (Restated)

Petitioner filed in the First District Court of Appeal a petition for writ of habeas corpus seeking a belated appeal. (I.1-4). After a evidentiary hearing, a special master found that petitioner had not requested an appeal and that his representations that he requested an appeal were "not accurate, as evidenced by appellant's own testimony at the instant hearing." (I.34, 37-38). The State moved for the court to recommend sanctions in the form of forfeiture of gain time pursuant to Section 944.28(2)(a), Florida Statutes (1997), because petitioner had knowingly or with reckless disregard for the truth brought false information or evidence before the court. (I.42). On rehearing, the First District Court of Appeal determined that Section 944.28(2)(a) applied to criminal proceedings, and the First District certified the following question to this Court as a question of great public importance:

May the gain-time forfeiture provisions of Section
944.28(2)(a) apply in criminal and collateral criminal
proceedings?

Saucer v. State, 24 Fla. L. Weekly D37 (Fla. 1st DCA Dec. 17, 1998), (I.41-54). While this case was pending on appeal, this Court, decided this issue in Hall v. State, 25 Fla. L. Weekly S42 (Fla. January 20, 2000). This Court held that Section 944.28(2)(a), Fla. Stat. (1999), did not apply to criminal and

collateral criminal proceedings, and expressly disapproved of the First District's opinion in Saucer. Id.

The State suggests that it is a miscarriage of justice and a flagrant abuse of the judicial system that a convicted prisoner, such as Saucer, can file false claims in a court of this state, cause the public and the judicial system the expense of special magistrates, hearings, transportation of the criminal, and appeal to a district court with impunity. However, this Court has rendered its decision in Hall v. State, regarding legislation enacted by the Florida Legislature. Accordingly, the decision below should be quashed.

CONCLUSION

Based on the foregoing, the State respectfully submits the certified question has been answered in the negative in Hall v. State, 25 Fla. L. Weekly S42 (Fla. January 20, 2000).

Respectfully submitted,

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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 R. Mitchell Prugh, Esq., Middleton & Prugh, P.A., 303 State Road 26, Melrose, Florida 32666, this 22d day of February, 2000.

Trisha E. Meggs
Attorney for the State of Florida

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