

IN THE SUPREME COURT OF FLORIDA

PAUL O. STOVALL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SupCt Case No. SC95-059
	)	
STATE OF FLORIDA,	)	Fifth DCA Case No. 5D97-2556
	)	
Respondent. )	)	
_____ )	)	

**ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL**

**PETITIONER’S POINT FIVE SUPPLEMENTAL BRIEF**

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

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## **CERTIFICATE OF FONT**

I HEREBY CERTIFY that the font used in this brief is 14 point proportionally spaced Times New Roman.

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SUSAN A. FAGAN  
ASSISTANT PUBLIC DEFENDER

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## SUMMARY OF THE ARGUMENT

POINT V: The Fifth District incorrectly affirmed the Petitioner's consecutive habitual felony offender sentences which is a serious, patent sentencing error amounting to fundamental error that is correctable on appeal, even in the absence of a contemporaneous objection. As recently noted by this Court, in Maddox v. State, 25 Fla. L. Weekly S367, 373 (Fla. May 11, 2000) “. . .[n]either the interests of justice nor judicial economy will be served by preventing appellate courts from correcting as fundamental error those serious, patent sentencing errors that have been brought to the courts' attention through the issues raised on appeal.” Accordingly, the Fifth District should have addressed in this instant appeal the trial court's improper and illegal imposition of consecutive habitual felony offender sentences for the Petitioner's convictions for counts eight, nine and ten in case number 96-34189.

## ARGUMENT

### THE TRIAL COURT IMPROPERLY SENTENCED THE PETITIONER

This Court ordered supplemental briefing on Jun 1, 2000, as to whether the alleged sentencing errors raised sub judice are patent and correctable as fundamental error in light of this Court's decision in Maddox v. State, 25 Fla. L. Weekly S 367 (Fla. May 11, 2000). Specifically, this Court held in Maddox, that "[n]either the interests of justice nor judicial economy will be served by preventing the appellate courts from correcting as fundamental error those serious, patent sentencing errors that have been brought to the courts' attention through the issues raised on appeal." Id. at S373. Petitioner respectfully submits that the instant sentencing error raised in this appeal, involving the trial court's imposition of consecutive habitual felony offender sentences, is a serious and patent fundamental error which is the type of sentencing error this Court held was addressable on appeal despite the lack of an objection being made below to the trial court.

The trial court sentenced the Petitioner as a habitual felony offender to concurrent sentences for each of the charged offenses in case numbers 96-34189 and 96-34187, except for the three armed kidnaping convictions (counts 8, 9, and 10 of case number 96-34189) which were sentenced by the trial court to run consecutive to each other, as well as to run consecutive to the other habitual felony offender

sentences for the additional convictions in case numbers 96-34187 and 96-34189. (R 127-152, 200-204; Vols. 1 and 2) (SR <sup>1</sup> 265-268; Vol. 6) As noted by defense counsel during the Petitioner's sentencing hearing:

In terms of the mandatory minimums just to articulate the anticipated objection, we hope that the Court would sentence to just one because this is one continuous event. The flow of things - - once there was possession of that firearm this is one continuous event, and we feel it would be improper to go ahead and give more than one mandatory minimum sentence. (R 194; Vol. 2)

As the First District held in Lipford v. State, 736 So. 2d 62 (Fla. 1st DCA 1999), the habitual felony offender statute, under this Court's interpretation in Hale v. State, 630 So.2d 521 (Fla. 1994), prohibits, as unauthorized, consecutive habitual felony offender sentences. Moreover, the First District pointed out in Lipford, supra, that even when a defendant fails to challenge his or her consecutive habitual felony offender sentences in the trial court, ". . . the Hale violation is nevertheless remediable in [a] direct appeal as fundamental error because a Hale violation constitutes an 'illegal' sentence." Id. at 63. See also, Sanders v. State, 698 So.2d 377 (Fla. 1st DCA 1997), and Nelson v. State, 719 So.2d 1230 (Fla. 1st DCA 1998). This Court has also previously held in State v. Mancino, 714 So.2d 429 (Fla. 1998),

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<sup>1</sup> SR = Supplemental record

that a “. . . sentence that patently fails to comport with statutory . . . limitations is by definition ‘illegal’.” Accordingly, such a sentencing error, as exists sub judice, is, similarly, a serious and patent sentencing error which is correctable under Maddox, as being fundamental in nature, which may be addressed on appeal in spite of the lack of an objection being made below to the trial court. This Court should, therefore, vacate the decision of the Fifth District in the instant case, which affirmed the Petitioner’s sentences, and remand this cause to the trial court for the imposition of lawful sentences as to the offenses charged in counts eight and nine and ten of case number 96-34189.

## CONCLUSION

Based on the authorities cited herein, Petitioner respectfully requests that this Honorable Court, as to Point Five, vacate the Appellant's sentences and remand for resentencing for counts eight, nine, and ten, in case number 96-34189 and order the trial court to impose the habitual felony offender sentences in counts eight, nine, and ten to run concurrently with the remaining sentences imposed in case number 96-34189.

Respectfully submitted,

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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 A. Butterworth, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, FL 32118, via his basket at the Fifth District Court of Appeal and mailed to: Mr. Paul O. Stovall, DC# 621892, Washington Correctional Institution, 4455 Sam Mitchell Drive, Chipley, FL 32428, on this 12th day of July, 2000.

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SUSAN A. FAGAN  
ASSISTANT PUBLIC DEFENDER