

IN THE SUPREME COURT OF FLORIDA

STEVIE LAVAN MCKNIGHT

Petitioner

vs.

Case No.95,091

STATE OF FLORIDA,

Respondent

_____ /

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF RESPONDENT ON THE MERITS

ROBERT BUTTERWORTH
ATTORNEY GENERAL

ROBERT J. KRAUSS
Senior Assistant Attorney General
Chief of Criminal Law, Tampa
Florida Bar No. 0238538

TIMOTHY A. FREELAND
Assistant Attorney General
Fla. Bar No. 539181
Westwood Center
2002 N. Lois, Suite 700
Tampa, Florida 33607

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 3

**THE TRIAL COURT PROPERLY ASSESSED TWENTY FIVE
POINTS ON THE GUIDELINES SCORESHEET FOR
POSSESSION OF A SEMIUTOMATIC FIREARM
(Restated by Respondent)**

CONCLUSION 6

CERTIFICATE OF SERVICE 6

TABLE OF AUTHORITIES

CASES

State v. Davidson,
666 So. 2d 914 (Fla. 2d DCA 1995) 4

White v. State,
714 So. 2d 440 (Fla. 1998) 3,4

STATUTES

Fla. Stat. Sec. 790.05 (1995) 3

RULES OF CRIMINAL PROCEDURE

Fla. R. Crim. Proc. 3.702(d)(12) 5

PRELIMINARY STATEMENT

Respondent's brief is prepared in Courier New 12 point.

STATEMENT OF THE CASE AND FACTS

Appellee accepts Appellant's Statement of the Case and Facts for the purposes of this appeal.

SUMMARY OF THE ARGUMENT

The 2nd District's decision was based on the factual distinction between a mere firearm and a semiautomatic weapon. In cases where a defendant is convicted of possession of a firearm and the firearm involved is either a semiautomatic weapon or a machine gun, the sentencing court should be permitted to assess additional points at the time of sentencing to reflect the greater danger that possession of these types of weapons create.

ARGUMENT

**THE TRIAL COURT PROPERLY ASSESSED TWENTY FIVE
POINTS ON THE GUIDELINES SCORESHEET FOR
POSSESSION OF A SEMIUTOMATIC FIREARM
(Restated by Respondent)**

Appellant was convicted of possessing a concealed firearm pursuant to Fla. Stat. Sec. 790.05 (1995). At sentencing, the trial court assessed an additional 25 points because the firearm in question was a semiautomatic weapon. Appellant claims that the trial court erred in assessing these additional points because, he asserts, under this Court's decision in White v. State, 714 So. 2d 440 (Fla. 1998) the trial court, when sentencing a defendant for possession of a firearm, is prohibited from ever assessing additional points when that firearm is either a semiautomatic weapon or a machine gun. Appellant's position is without merit.

The defendant in White was charged with possession of a firearm by a convicted felon and carrying a concealed weapon. This Court concluded that the trial court's assessing an additional eighteen points for possessing the firearm was improper because to do so would be a violation of his right to be free of being placed in double jeopardy. The State would urge that White is distinguishable from the present case.

The concern in White was with enhancement of a single criminal offense. The defendant had two charges relating to his

possession of a single firearm, and the sentencing court, by imposing additional points for possessing the firearm on the guidelines scoresheet, was in effect punishing him a third time, all for possessing the same weapon. But this Court's decision in White did not involve a defendant in possession of a semiautomatic weapon, as is the case here. As the 2nd District court noted in its decision, the additional twenty-five points is assessed because the firearm is more than merely a firearm, but a particularly deadly type of firearm- a semiautomatic one.

An analysis of this case from a strict double jeopardy viewpoint mandates a decision that supports the Second District's opinion. While it is accurate to state that a conviction for possession of a firearm and then being assessed additional points at sentencing for that same firearm appears to constitute double punishment for the same offense. But, the State would urge, there is a difference where the firearm is of a particular type- a semiautomatic weapon or a machine gun. Whereas Petitioner would assert that this Court's reasoning in White is equally applicable to cases where points have been assessed for a semiautomatic weapon or a machine gun, he nevertheless fails to account for the plain factual distinction between the types of firearms involved. It is not in dispute that a firearm capable of firing multiple shots in a short period of time is far more dangerous than a single-shot weapon. The 2nd District's opinion in State v.

Davidson, 666 So. 2d 914 (Fla. 2d DCA 1995) reflects this interpretation; that we should be able to punish more severely those who are found to be in possession of semiautomatic weapons.

The State would urge, therefore, that this Court find that it is proper in cases where a firearm is either a semiautomatic weapon or a machine gun for the sentencing court to assess an additional twenty-five points under Fla. R. Crim. Proc. 3.702(d)(12).

CONCLUSION

WHEREFORE based on the foregoing arguments, citations of authority and references to the record, this Honorable Court should affirm the decision of the trial court and the Second District Court of Appeal.

Respectfully Submitted

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROBERT J. KRAUSS
Senior Assistant Attorney
General
Chief of Criminal Law, Tampa
Florida Bar No. 0238538

TIMOTHY A. FREELAND
Assistant Attorney General
Fla. Bar. No. 539181
Westwood Center
2002 N. Lois Ave Suite 700
Tampa, FL 33607
(813) 873-4739

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Megan Olson, Assistant Public Defender, Criminal Justice Center, 14250 49th Street North, Clearwater, Florida 33762 this _____ day of August, 1999.

OF COUNSEL FOR RESPONDENT