SIJPREME COURT OF FLORIDA

CASE NO: SC-9937

LlOYD M. JONES,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON APPLICATION FOR DISCRETIONARY REVIEW

REPLY BRIEF OF PETITIONER

/s/ Lloyd M. Jones 083987

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STATEMENT OF THE CASE AND FACTS

Petitioner adopts the statement of the case and facts on page 5 of his initial brief.

SUMMARY OF THE ARGUMENT

Petitioner agrees with the respondents that he is entitled to a resentencing pursuantto this court's derision in State v. Thompson, 25 Fla. 2. Weekly S1 (Fla. December 22, 1999). As the respondents conceeded in their response petitioner was sentenced as a violent career criminal for crimes that are in the window period of the unconstitutional statue.

Petitioner argues that a trial court's finding that some action or inaaction by defense counsel was tactical is generally inappropriate without an evidentiary hearing. Accordingly, petitioner should be granted an evidentiary hearing on his claim of counsel's failure to call two witnesses who could have provided exculpatory evidence at trial.

ARGUMENT

PETITIONER AGREES WITH TBE RESPONDENT THAT HE IS ENTITLED TO A RESENTENCING PURSUANT TO THIS COURTS DECISION IN STATE V. THOMPSON, 25 FLA. L. WEEKLY S I. (FLA. DECEMBER 22, 1999)

This court:; recent decision in State v. Thompson, 25 Fla. L. Weekly (Fla. December 22, 1999), mandates that petitioner be resentenced as the respondents correctly concedes.

This court: should reject the Fourth DCA5 conf lict in Salters v. State, 731 SO. 2d 826 (Fla. 4th DCA 1999) attempt to close the window period in State v. Thompson, 25 Fla. L. weekly S I. (Fla. December 22. 19999. As such, this court: should continuc to follow its holding in State v. Johnson. 616 So.2d 1, 2 (Fla. 1993) that Thompson relies upon, i.c., from Qcrober 1, 1995 to May 24, 1997.

Petitioner is entitled to he resentenced under the valid laws in effect.

ARGUMENT

PETITIONER ARCUES THAT A TRIAL COURT'S FINDINGS THAT SOME ACTION OR INACTION BY DEFENSE COUNSEL WAS TACTICAL IS CENERALLY TNAPPROPRIATE WITHOUT AN EVIDENTIARY HEARING

Petitioner relies upon **Flores v. State**, 662 So.2d 1350 (Fla. 2d DCA 1995) for thc proposition that ineffective assistance of counsel claims merited evidentiary hearing. The decision to call or not to call particular witness is only a tactical judgement. However, the question whether Johnny Morill statement would constitute inadmissible hearsay, at least needs to be resolved at an evidentiary hearing. See McMillian v State, 717 So.2d 102 (Fla. 4 DCA 1998); Anthony v State, 660 So. 2d 374, 376 (Fla. 4 DCA 1995).

Petitioner renew and hold to his claim that he did not receive effective assistance of counsel consistent with the sixth amendment and Strickland purposes.

CONCLUSION

The petitioner's case should be remanded to the trial court for resentencing in light of the first issue raised herein, and an evidentiary hearing should be held to determine the second issue of ineffective assistance of counsel raised herein.

Respectfully submitted,

/S/_____

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CERTIFICATE OF SERVICE

I Hereby Certify that a true and correct copy of the foregoing reply brief has been furnished to Mark Rosenblatt, Assistant Attorney General of Dept. of Legal Affairs, 444 Brickell Ave., ste 950, Miami, Florida 33131 on this 13 day of March. 2000.

/S/ Lloyd M. Jones
Lloyd M. Jones