IN THE SUPREME COURT OF FLORIDA

CHARLES EDWARDS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC00-443

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent State of Florida was the appellee in the District Court of Appeal (DCA) and will be referred to as the state. Petitioner CHARLES EDWARDS was the criminal appellant in the DCA and will be referred to as the petitioner or by proper name.

The record on appeal consists of a volume, a transcript of the jury trial, and a transcript of the sentencing proceeding.

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 or larger.

STATEMENT OF THE CASE

The state accepts petitioner's statement of the case.

STATEMENT OF THE FACTS

Statements of the facts should focus on the issues presented and should not include distracting or irrelevant material unrelated to those issues. The facts should be presented in a non-argumentative manner consistent with the standards of review and presumptions of correctness afforded to trial court judgments, including recitations on whether the issues and arguments presented were properly preserved below. Kneale v. Kneale, 67 So.2d 233 (Fla. 1953)("With the caseload we carry, and

for other reasons more important to the litigant, we need nothing in the record or the briefs but the wheat, the chaff should be let go.”); Thompson v. State, 588 So.2d 687 (Fla. 1st DCA 1991)(Florida Rule of Appellate Procedure 9.210 places “a square obligation upon appellant to provide the court with a full and fair statement of facts,’ which ”must not only be objective, but must be cast in a form appropriate to the standard of review applicable to the matters presented.”

The state rejects petitioner’s statement of the facts. There are no issues concerning the underlying convictions, and petitioner filed a brief in the district court pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct.1396, 18 L.Ed.2d 493 (1967) confessing that no good faith argument could be made that **any** reversible error occurred. Nevertheless, petitioner has presented a statement of facts which improperly, and unnecessarily, recites the exculpatory testimony of the convicted criminal, Edwards, which the jury rejected by its guilty verdict. If the jury had accepted petitioner’s claim of consensual sex between two adults, there would be no conviction and no sentencing issue.

This appeal presents purely legal sentencing questions but the history of the case and facts are so illustrative of the state of criminal appellate practice, and the need for corrective action, that they are worth noting. The state provides the following facts concerning the issue on which this Court’s jurisdiction is based.

The primary criminal offense, sexual battery, occurred on 17 February 1997 with sentencing pursuant to the 1995 sentencing guidelines. The state requested that Edwards be sentenced to the top of the 1995 guidelines, 168.7 **months**[1], and the trial court agreed. S17. However, in pronouncing sentence, the trial court inadvertently pronounced 14.7 **years**[2] which error was then compounded by entering into the written sentencing document as 14 years and 7 months. S18,I79. These arithmetic errors in computing the sentencing guidelines were not noted or preserved in the trial court and the sentence was not identified as a judicial act to be reviewed. I85-86.

Petitioner's counsel in the district court filed an initial brief on 1 June 1999 pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct.1396, 18 L.Ed.2d 493 (1967) professing that no good faith argument could be made that **any** arguably reversible error occurred. However, unrealistically reasoning that the error of approximately 6 months additional imprisonment was only minor, appellate counsel argued that the district court should address the unpreserved claim of sentencing error while simultaneously conducting review pursuant to Anders[3]. Counsel also moved the

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[1]14 years and 21 days by simple arithmetic if a month is treated as 30 days.

[2]14 years and 8.4 months by simple arithmetic.

[3]This Court in In re Anders Briefs, 581 So.2d 149 (Fla. 1991) institutionalized what Justice Stevens in McCoy v. Court of Appeals, 486 U.S. 429, 431 100 L.Ed.2d 440, 449, 108 S.Ct. 1895 (1988) said could "fairly be characterized as schizophrenic"

district court to certify this case to the Florida Supreme Court because it presented a question of great public importance. The state moved to strike the initial brief arguing that neither the state nor the court could be realistically expected to respond to an initial brief which schizophrenically argued that the appeal was wholly frivolous but that it also contained an unpreserved, prejudicial sentencing error of 6 plus months imprisonment and was simultaneously a case of great public importance which required the attention of the state's highest court. The district court denied the state's motion to strike and affirmed with a citation to Collins v. State, 732 So.2d 1149 (Fla. 1st DCA 1999). Edwards v. State, 748 So.2d 1106 (Fla. 1st DCA 2000). The affirmance does not refer to Anders, which should indicate that an Anders review was not conducted and that the affirmance was on the merits and the rejection of the claimed, unpreserved minor sentencing error.

It is worthy of note that appellant's initial Anders brief of 1 June 1999 overlooked entirely what was then the most prominent

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briefing and appellate review by holding that appellants could simultaneously argue that no arguably reversible errors occurred, and demand full appellate review pursuant to Anders, while also advocating that "minor" sentencing errors were present which must be reversed on appeal even if not preserved in the trial court. The claim that six months additional imprisonment is "minor", in the view of the state, is an abusive use of "minor" but the state acknowledges that "minor" as used in this Court's decision has no legal content. It serves only to create additional confusion and work for all concerned. The state opposed, and opposes, this hybrid approach to briefing and appellate review for the obvious mischief which it routinely creates, as here.

legal issue in the state, whether chapter 95-184 enacting the 1995 sentencing guidelines violated the single subject rule as the Second District Court of Appeal had held the previous year in Heggs v. State, 718 So.2d 263 (Fla. 2d DCA 1998). The district court's review below, which was presumably not conducted pursuant to Anders, also overlooked this critical issue which has since been definitively resolved by this Court's holdings in Heggs v. State, 759 So.2d 620 (Fla. 2000) and Trapp v. State, 25 Fla. L. Weekly S429 (Fla. 1 June 2000).

SUMMARY OF ARGUMENT

Summaries of the arguments are not presented because of their brevity.

ARGUMENT

ISSUE I

DID THE TRIAL COURT MAKE AN ERROR IN ARITHMETIC CAUSING A DEPARTURE FROM THE SENTENCING GUIDELINES WHICH THIS COURT SHOULD NOW ADDRESS PURSUANT TO MADDOX V. STATE, 760 SO.2D 89 (FLA. 2000) EVEN THOUGH IT WAS NOT PRESERVED IN THE TRIAL COURT AND COULD HAVE BEEN EASILY CORRECTED BY A SIMPLE MOTION PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.800(A)? (Restated)

The simple unpreserved arithmetic error in issue I has required, or is requiring, the attention or inattention of eleven judges, six counsel, and an unknown number of law clerks and other support personnel, but could have been immediately resolved by the filing of a postconviction motion pursuant to Florida Rule of Criminal Procedure 3.800(a) in the trial court pursuant to the principles set out in Maddox v. State, 708 So.2d 617 (Fla. 5th DCA 1998), approved and disapproved in part, 760 So.2d 89 (Fla.

2000). Moreover, assuming that the primary responsibility of a competent and professional counsel is to protect the interests of the client, appellant's counsel below should not have sought discretionary review in this Court but should have returned to the trial court for the filing of a rule 3.800(a) motion seeking to correct the blatantly obvious arithmetic error. Had this been done, the arithmetic error would have long been corrected by the trial court instead of languishing in this Court awaiting resolution and ultimate correction in the trial court. After all this appellate activity, which can fairly be described as entirely unnecessary, we will still end up where we should have begun, in the trial court.

This issue is mooted by issue II which is presented here for the first time.

ISSUE II

IS THE PETITIONER ENTITLED TO BE RESENTENCED PURSUANT TO HEGGS V. STATE, 759 SO.2D 620 (FLA. 2000)?

The Heggs issue raised here for the first time in a brief filed 7 August 2000 moots issue I. Just as in Issue I, Issue II could and should have been immediately raised and corrected in the trial court following the issuance of Trapp v. State, 25 Fla. L. Weekly S429 (Fla. 1 June 2000) by simply dismissing this pointless petition for discretionary review and going directly to the only court with jurisdiction to impose a new sentence by filing a rule 3.800(a) motion in the trial court. In the current

posture of the case, the district court decision should be quashed and the case returned to the trial court for reconsideration in light of Heggs and Trapp. Alternatively, if this Court wishes to make the point that parties and counsel have no constitutional right to waste public resources pursuing pointless appeals, jurisdiction could be discharged with appropriate comments on the professional practice of law and without prejudice to petitioner filing a rule 3.800(a) or 3.850 motion in the trial court raising the Heggs issue.

CONCLUSION

The district court decision should be quashed with directions to remand to the trial court for reconsideration in light of the Heggs claim or, to the same end, jurisdiction discharged with appropriate comments and without prejudice to petitioner's right to raise the Heggs issue in the trial court.

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 has been furnished by U.S. Mail to Kathleen Stover, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 28th day of August 2000.

James W. Rogers
Attorney for State of Florida

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