

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA)	
Petitioner)	
)	
)	
vs.)	CASE NO. SC01-1596
)	LOWER TRIBUNAL CASE NO.
GREGORY BYRON ORR)	4D99-4339;
)	4D99-4340;
Respondent)	4D99-4341.
_____)	

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

ANSWER BRIEF OF RESPONDENT

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TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS i

AUTHORITIES CITED ii

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE AND THE FACTS 2

SUMMARY OF THE ARGUMENT 3

ARGUMENT

**RESPONDENT ACKNOWLEDGES THE DECISION IN TERRY
REQUIRES THE OPINION OF THE DISTRICT COURT BE
REVERSED** 4

CONCLUSION 5

CERTIFICATE OF SERVICE 6

AUTHORITIES CITED

<u>CASES CITED</u>	<u>PAGE</u>
<u>McFadden v. State</u> , 773 So. 2d 1237 (Fla. 4th DCA 2000)	4
<u>Orr v. State</u> , 793 So. 2d 48 (Fla. 4th DCA 2001)	4
<u>Terry v. State</u> , 27 Fla. L. Weekly S89 (Fla. January 24, 2002)	4

PRELIMINARY STATEMENT

Respondent acknowledges and adopts Petitioner's Preliminary Statement.

STATEMENT OF THE CASE AND THE FACTS

Respondent accepts Petitioner's Statement of the Case and the Facts as correct and accurate.

SUMMARY OF THE ARGUMENT

Respondent recognizes that this Court's decision in Terry v. State , 27 Fla. L. Weekly S89 (Fla. January 24, 2002) requires the decision of the Fourth District Court of Appeal in the instant case be reversed. However, Petitioner would ask the Court to revisit the issue and adopt the reasoning and result reached by the Fourth District Court below in this cause and in McFadden v. State , 773 So. 2d 1237 (Fla. 4th DCA 2000).

ARGUMENT

RESPONDENT ACKNOWLEDGES THE DECISION IN TERRY REQUIRES THE OPINION OF THE DISTRICT COURT BE REVERSED.

Respondent was acknowledges that this Court's decision in Terry v. State, 27 Fla. L. Weekly S89 (Fla. January 24, 2002) would require the decision of the Fourth District Court of Appeal in Orr v. State, 793 So. 2d 48 (Fla. 4th DCA 2001) to be reversed.

As in Terry , respondent entered a negotiated plea in which he acknowledged he qualified for sentencing as an habitual offender (Tc11-12). Respondent was sentenced to probation as an habitual offender (Tc 24, 26,-27, 35). Upon violation, the trial court sentenced respondent to the maximum permissible habitual offender sentence in each case (Tc 110). The sentence imposed in the instant case is virtually identical to that imposed in McFadden v. State, 773 So. 2d 1237 (Fla. 4th DCA 2000). McFadden was disapproved by this Court in Terry.

While acknowledging that Terry would require reversal of the decision entered below in the instant case, respondent would request this Court revisit the issue and adopt the reasoning of the Fourth District Court of Appeal in McFadden.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Respondent acknowledges that this Courts decision in Terry v. State, 27 Fla. L. Weekly S89 (Fla. January 24, 2000) requires reversal in this case, however, respondent would request the Court revisit the issue and adopt the reasoning of the Fourth District Court of Appeal in McFadden.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to DONNA ENG, Assistant Attorney General, 1515 N. Flagler Drive, 9th floor, West Palm Beach, Florida, 33401-3432 this 20th day of March, 2002.

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

In accordance with the Administrative Order of the Court dated July 13, 1998, the undersigned certifies that the instant brief has been prepared with 14 point times New Roman type, a font that is not spaced proportionately

Counsel for Appellant