

IN THE SUPREME COURT OF FLORIDA

SAMUEL A. COPPOLA,

Petitioner,

Case No.: SC01-2442

vs.

DCA Case No.: 5D01-2360

L.T. Case No.: 97-274CF

STATE OF FLORIDA,

Respondent.

PETITIONER SAMUEL A. COPPOLA'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

STATEMENT OF THE CASE AND FACTS..... 1

SUMMARY OF THE ARGUMENT 1

ARGUMENT 3

 I. MR. COPPOLA’S ARGUMENT WAS PRESERVED
 FOR REVIEW 3

 II. CONFLICT EXISTS BETWEEN THE DECISION
 UNDER REVIEW AND JENKINS AND MURPHY 4

 III. THE FIFTH DISTRICT ERRED IN HOLDING THAT
 MR. COPPOLA WAS NOT ENTITLED TO RELIEF
 BECAUSE HE DID NOT ENTER A GUIDELINES
 SENTENCE..... 5

 IV. HEGGS APPLIES RETROACTIVELY. 7

 A. Heggs applies to sentences imposed where
 convictions were final prior to the decision. 7

 B. Heggs applies retroactively when the sentence
 is imposed pursuant to a negotiated plea. 8

 C. Heggs constitutes a newly discovered fact..... 9

 D. Heggs constitutes a jurisprudential upheaval. 10

CONCLUSION..... 14

CERTIFICATE OF SERVICE..... 16

CERTIFICATE OF FONT COMPLIANCE..... 16

TABLE OF AUTHORITIES

FEDERAL CASES

Apprendi v. New Jersey, 530 U.S. 466 (2000) 13

STATE CASES

Atlantic Coastline R.R. Co. v. Bd. of Equalizers, 94 So. 681 (Fla. 1922)..... 10

Banks v. State, 887 So. 2d 1191 (Fla. 2004)..... 6, 8

Bell v. State, 585 So. 2d 1125 (Fla. 2d DCA 1991) 3

Coppola v. State, 795 So. 2d 258 (Fla. 5th DCA 2001)..... 4

Dixon v. State, 730 So. 2d 265 (Fla. 1999)..... 11, 14

Ferguson v. State, 789 So. 2d 306 (Fla. 2001) 14

Forbert v. State, 437 So. 2d 1079 (Fla. 1983) 2, 9

Ford v. State, 825 So. 2d 358 (Fla. 2002)..... 6

Gantorious v. State, 693 So. 2d 1040 (Fla. 3d DCA 1997)..... 14

Griffin v. Unemployment Appeals Commission, 868 So. 2d 1262 (Fla. 4th DCA 2004)..... 3

Heggs v. State, 759 So. 2d 620 (Fla. 2000) passim

Hughes v. State, 901 So. 2d 837 (Fla. 2005) 13, 14

Jenkins v. State, 771 So. 2d 27 (Fla. 4th DCA 2000) passim

Lancaster v. State, 764 So. 2d 835 (Fla. 5th DCA 2000).....6, 7, 8

Latiif v. State, 787 So. 2d 834 (Fla. 2001)..... 5

McCuiston v. State, 534 So. 2d 1144 (Fla. 1988) 12, 13

<u>Mitchell v. Moore</u> , 786 So. 2d 521 (Fla. 2001).....	14
<u>Murphy v. State</u> , 773 So. 2d 1174 (Fla. 2d DCA 2000)	passim
<u>Regan v. State</u> , 787 So. 2d 265 (Fla. 1st DCA 2001)	11, 12
<u>Register v. State</u> , 619 So. 2d 498 (Fla. 2d DCA 1993)	3
<u>State v. Calloway</u> , 658 So. 2d 983 (Fla. 1995).....	10, 14
<u>State v. Johnson</u> , 616 So. 2d 1 (Fla. 1993)	11, 12
<u>State v. Thompson</u> , 750 So. 2d 643 (Fla. 1999).....	11, 12
<u>Stovall v. Denno</u> , 388 U.S. 293 (1967)	12
<u>Sunset Harbour Condo. Ass’n v. Robbins</u> , 30 Fla. L. Weekly S548 (Fla. July 7, 2005).....	10
<u>Taylor v. State</u> , 899 So. 2d 1191 (Fla. 1st DCA 2005)	6, 8
<u>Trapp v. State</u> , 760 So. 2d 924 (Fla. 2000)	2, 7, 8, 11
<u>Whitehead v. State</u> , 498 So. 2d, 863 (Fla. 1986).....	12, 13
<u>Witt v. State</u> , 387 So. 2d 922 (Fla. 1980)	passim

OTHER AUTHORITIES

Fla. R. Crim. P. 3850	3, 6, 7
Ch. 95-185, Laws of Fla.....	8

STATEMENT OF THE CASE AND FACTS

Mr. Coppola relies on the statement of case and facts as accurately set forth in his Initial Brief.

SUMMARY OF THE ARGUMENT

Contrary to the arguments advanced by the State in its answer brief, this Court should hold that its decision in Heggs v. State, 759 So. 2d 620 (Fla. 2000), applies retroactively. First, Mr. Coppola's argument was unquestionably preserved for review. In his pro se motion for relief, he specifically relied on two district court cases that held that Heggs applied retroactively. He should not be precluded from relief from an illegal sentence simply because he did not include the words "retroactive" or "change in the law" in his motion.

Second, clear express and direct conflict exists between the decision under review and Murphy v. State, 773 So. 2d 1174 (Fla. 2d DCA 2000), and Jenkins v. State, 787 So. 2d 27 (Fla. 4th DCA 2000). The Fifth District in the instant decision held that Heggs does not apply retroactively because it does not constitute a newly discovered fact. Murphy and Jenkins held that Heggs does apply retroactively because the facts upon which the claim is based could not have been known earlier. Indeed, the Fifth District expressly recognized in its opinion that conflict exists between these decisions.

Third, the trial court erred, and the State erroneously argues, that Mr. Coppola is not entitled to relief because he did not enter a guidelines sentence. The record makes clear that he indeed entered a plea agreement based on the 1995 sentencing guidelines. This Court has held that Heggs relief is available for an illegal sentence imposed under the 1995 guidelines as a result of a negotiated plea.

Finally, under this Court's established caselaw, Heggs satisfies the requirements of retroactivity. This Court made clear in Trapp v. State, 760 So. 2d 924 (Fla. 2000), that inmates whose convictions were final at the time of the Heggs decision were nonetheless entitled to relief. This Court made clear in Forbert v. State, 437 So. 2d 1079 (Fla. 1983), that a plea entered upon the mistaken belief that the sentence imposed was legal when it is later determined to be illegal constitutes a newly discovered fact sufficient to permit either party to withdraw from the plea. The unconstitutionality of a sentence is not a fact that a criminal defendant could have known earlier.

And, the very nature of this Court's decision in Heggs reveals that that decision is a "jurisprudential upheaval" and not merely a procedural change or "clarification" in the law. Heggs did not clarify what the law had been at the time of enactment. It struck the law down as unconstitutional. Under this Court's and the district courts' established application of the Witt test, Heggs should apply retroactively.

ARGUMENT

I. MR. COPPOLA'S ARGUMENT WAS PRESERVED FOR REVIEW.

The State first contends that Mr. Coppola has not preserved his arguments for review because he never specifically alleged a retroactive change in the law. In his pro se motion filed under Florida Rule of Criminal Procedure 3.850, Mr. Coppola alleged that his sentence was illegal because it was based on guidelines that were later held unconstitutional in Heggs v. State, 759 So. 2d 620 (Fla. 2000). Mr. Coppola contended that he entered his plea based on the 1995 guidelines scoresheet as shown to him by his attorney and that he felt he had no choice but to enter the plea. In his motion, Mr. Coppola relied upon Murphy v. State, 773 So. 2d 1174 (Fla. 2d DCA 2000), and Jenkins v. State, 771 So. 2d 27 (Fla. 4th DCA 2000), in which the Second and Fourth Districts held that Heggs was retroactive and that inmates had two years from this Court's issuance of Heggs to seek relief.

It is well established under Florida law that pro se litigants must be afforded leniency in the construction of their pleadings. Griffin v. Unemployment Appeals Comm'n, 868 So. 2d 1262 (Fla. 4th DCA 2004); Register v. State, 619 So. 2d 498, 499 (Fla. 2d DCA 1993); Bell v. State, 585 So. 2d 1125 (Fla. 2d DCA 1991). It is clear from Mr. Coppola's pro se motion that he was seeking to have Heggs apply retroactively. Indeed, he specifically cited cases that held that Heggs applied retroactively and that inmates have two years from the date of Heggs to file their

motions for relief. Mr. Coppola should not be precluded from seeking relief from an unconstitutional sentence simply because he did not include the words “change in the law” or “retroactivity” in his pro se motion.

II. CONFLICT EXISTS BETWEEN THE DECISION UNDER REVIEW AND JENKINS AND MURPHY

In the decision under review, the Fifth District held that this Court’s decision in Heggs does not apply retroactively because it does not constitute a newly discovered fact and because it does not meet the retroactivity test of Witt v. State, 387 So. 2d 922 (Fla. 1980). Coppola v. State, 795 So. 2d 258, 260 (Fla. 5th DCA 2001). The court held that rule 3.850 contemplates a fact in the sense of evidence which tends to prove or disprove a material fact and Heggs does not constitute such a fact. Id. at 259. In so holding, the court expressly recognized that a conflict existed between its decision and Murphy and Jenkins.

In Murphy and Jenkins, the Second and Fourth Districts held that Heggs was retroactive and that an inmate should have two years from the Heggs decision to challenge the validity of his or her sentence because the facts upon which the claim is based could not have been known earlier. Murphy, 773 So. 2d at 1175; Jenkins, 771 So. 2d at 38.

As recognized in the decision under review, clear express and direct conflict exists among the instant decision and Jenkins and Murphy. This Court's decision to grant review in this case was correct.¹

III. THE FIFTH DISTRICT ERRED IN HOLDING THAT MR. COPPOLA WAS NOT ENTITLED TO RELIEF BECAUSE HE DID NOT ENTER A GUIDELINES SENTENCE.

The State next contends that Heggs does not apply to Mr. Coppola's sentence because he did not receive a guidelines sentence, but rather entered a negotiated plea for a specific sentence. As argued in Mr. Coppola's initial brief (p. 24), this position has been squarely rejected by this Court in a recent decision. See Latiif v. State, 787 So. 2d 834 (Fla. 2001) (recognizing that a guidelines sentence can be imposed pursuant to a negotiated plea and that an inmate serving an unlawful sentence under Heggs has two remedies -- automatic resentencing or reinstated charges).² Moreover, this Court and other district courts have routinely

¹ As pointed out by Mr. Coppola in his Initial Brief, the express and direct point of conflict between Jenkins/Murphy and Coppola concerns the timeliness of a challenge to a sentence based on Heggs -- i.e., whether Heggs applies retroactively. The specific conflict is that Coppola held that Heggs does not constitute a newly discovered fact, while Jenkins/Murphy held that it does. Nonetheless, indicated in the Initial Brief (p.9, n.2), undersigned counsel recognizes that the Second and Fourth Districts in Murphy and Jenkins hold that Heggs is retroactive under rule 3.850(b)(1) (newly discovered evidence), while the Fifth District in Coppola held that Heggs is not retroactive under both rule 3.850(b)(1) and (b)(2). Thus, the conflict before this Court is the timeliness of a Heggs challenge, regardless of which subdivision of the rule is applied

² In its brief, the State maintains, "Interestingly, Coppola never mentions the possibility of withdrawing from his plea deal and proceeding to trial on a charge of

addressed the merits of Heggs challenges based on sentences imposed as a result of a negotiated plea. These decisions make clear that a negotiated plea entered pursuant to the 1995 sentencing guidelines -- as opposed to a plea for a specific term of years -- entitles an inmate to relief under Heggs. See, e.g., Banks v. State, 887 So. 2d 1191 (Fla. 2004); Taylor v. State, 899 So. 2d 1191 (Fla. 1st DCA 2005); Lancaster v. State, 764 So. 2d 835 (Fla. 5th DCA 2000).

As argued in Mr. Coppola's initial brief (p. 25), the trial court erred in determining that Mr. Coppola's plea was for a specific term of years. The record shows that Mr. Coppola was indeed sentenced using the 1995 guidelines -- they were attached to the package sent to the Department of Corrections. In addition, a "guidelines scoresheet" was used to calculate Mr. Coppola's sentence, and in Mr. Coppola's Plea Agreement, he recognized that the Sentencing Guidelines had been fully explained to him by a lawyer and that his total sentence points were within the guidelines absent any departure reasons. See Appx. A & C to Mr. Coppola's Resp. to this Court's Order to Show Cause (Appx. C to Mr. Coppola's Initial Brief in this Court). There is absolutely no record evidence that the sentence imposed

first degree murder . . ." AB, 8. To the contrary, in his Initial Brief, Mr. Coppola absolutely recognized that the caselaw provides Mr. Coppola with two options: (1) automatic resentencing under lawful guidelines; or (2) withdrawal by the State from the plea agreement and, if the State so chooses, reinstatement of the original charges. IB, 24-25. Mr. Coppola's sentence is illegal, and he is entitled to a legal sentence. Mr. Coppola has been duly advised of the possibility that his original charges may be reinstated.

was anything but a guidelines sentence. The sentence imposed was squarely within the 1995 guidelines, and there was no agreement by the parties to a departure from those guidelines.

Moreover, Mr. Coppola specifically alleged in his 3.850 motion that he felt he had no choice but to enter the plea agreement based on the 1995 guidelines. He explained that his attorney showed him the actual sentencing guidelines scoresheet and showed him where his points fell in relation to the sentence he would receive. Had he known the guidelines were invalid, he would not have entered the plea. R. 45, 330-31. Based on these allegations, Mr. Coppola requested that the trial court vacate and set aside his judgment and sentence so that he could be resentenced under the correct guidelines. Mr. Coppola thus alleged a prima facie basis for postconviction relief under Heggs. Lancaster, 764 So. 2d at 836. In all events, the record does not conclusively disprove this issue. At the least, Mr. Coppola is entitled to an evidentiary hearing on this issue. Ford v. State, 825 So. 2d 358 (Fla. 2002).

IV. HEGGS APPLIES RETROACTIVELY.

A. Heggs applies to sentences imposed where convictions were final prior to the decision.

The State contends that Heggs does not apply retroactively to pleas where the convictions were final prior to this Court's decision in Heggs. This contention was squarely and conclusively addressed by this Court in Trapp v. State, 760 So.

2d 924 (Fla. 2000). In Trapp, this Court held that the window period for challenging the sentencing guidelines provisions declared unconstitutional in Heggs was October 1, 1995, to May 24, 1997 -- the dates that the guidelines were in effect. “Stated another way, persons . . . who are challenging a sentence imposed under the sentencing guidelines as amended by chapter 95-185 have standing to do so if the relevant criminal offense or offenses occurred on or after October 1, 1995, and before May 24, 1997.” Id. at 928.

Certainly, if an offense was committed on October 1, 1995, that conviction could be final prior to this Court’s decision in Heggs on February 17, 2000. Yet this Court specifically held in Trapp that those who committed an offense on October 1, 1995, could be entitled to Heggs relief upon a proper showing of entitlement to such relief. Mr. Coppola’s motion for relief was timely filed in this case.

B. Heggs applies retroactively when the sentence is imposed pursuant to a negotiated plea.

For the same reasons set forth above in section II, the fact that Mr. Coppola’s sentence was imposed pursuant to a negotiated plea does not preclude the applicability of Heggs. See, e.g., Banks v. State, 887 So. 2d 1191 (Fla. 2004); Taylor v. State, 899 So. 2d 1191 (Fla. 1st DCA 2005); Lancaster v. State, 764 So. 2d 835 (Fla. 5th DCA 2000).

C. Heggs constitutes a newly discovered fact.

It is a well-established principle of law that a defendant should be allowed to withdraw a plea of guilty where the plea was based upon a misunderstanding or misapprehension of facts considered by the defendant in making the plea. . . . [W]hen a defendant pleads guilty with the understanding that the sentence he or she receives in exchange is legal, when in fact the sentence is not legal, the defendant should be given the opportunity to withdraw the plea when later challenging the legality of the sentence.

Forbert v. State, 437 So. 2d 1079, 1081 (Fla. 1983). In Forbert, this Court held that a plea entered upon the mistaken belief that the sentence imposed was legal when it is later determined to be illegal constitutes a “misapprehension of fact” sufficient to permit either party to withdraw from the plea. Id. Thus, Mr. Coppola’s mistaken belief that the plea he entered based on the 1995 guidelines was legal was a mistake of fact that could not have been known before Heggs was decided. The State’s reliance on the definition given “newly discovered fact” by this Court in other contexts is belied by this Court’s direct recognition that the mistake as to the legality of a plea is indeed a fact.

The State further argues that, even if the illegality of a Heggs sentence is a fact, it is a fact that could have been ascertained earlier because it could have been discovered by reviewing the law when it was published. This argument is wholly unreasonable. Courts cannot expect a criminal defendant to have the capability to scrutinize every amendment passed by the Florida Legislature for potential

constitutional challenges. A defendant simply cannot be expected to guess that an unknown fact exists that will cause this Court to subsequently hold his or her sentence unconstitutional. Indeed, all laws are presumed constitutional until a court declares otherwise. Sunset Harbour Condo. Ass'n v. Robbins, 30 Fla. L. Weekly S548 (Fla. July 7, 2005); Atlantic Coastline R.R. Co. v. Bd. of Equalizers, 94 So. 681 (Fla. 1922). As the Second and Fourth Districts correctly held, Heggs is a fact that could not possibly have been known prior to this Court's actual decision.

D. Heggs constitutes a jurisprudential upheaval.

That Heggs constitutes a “jurisprudential upheaval” as opposed to an “evolutionary refinement” is evident merely by reference to the definitions given these terms by this Court. Heggs invalidated a sentencing statute as unconstitutional. It was a constitutional change in the law. Under no reading of that decision can it be said that Heggs was a procedural change or a “clarification” of the law. Heggs did not afford new or different standards for the admissibility of evidence or for procedural fairness, and it did not clarify what the law had been since the time of enactment. It struck the law down. For the same reasoning applied in other cases in which Florida courts have struck down laws and held that such decisions constituted a jurisprudential upheaval, Heggs constitutes a jurisprudential upheaval here. See State v. Calloway, 658 So. 2d 983 (Fla. 1995),

receded from on other grounds, *Dixon v. State*, 730 So. 2d 265 (Fla. 1999); *Gantorious v. State*, 693 So. 2d 1040 (Fla. 3d DCA 1997).

The State's relies almost exclusively on the First District's reasoning in *Regan v. State*, 787 So. 2d 265 (Fla. 1st DCA 2001), for its argument that Heggs does not meet the Witt retroactivity test. Mr. Coppola contends that the reasoning of that decision overlooks well established retroactivity principles. First, the decision did not resolve a mere technicality in the law. This Court has recognized that the single subject requirement in Florida's Constitution serves a manifestly important purpose -- even if striking down such a statute will require a number of persons to be resentenced. See *State v. Thompson*, 750 So. 2d 643, 649 (Fla. 1999). Florida's constitution, as implemented by the people, mandates that the laws passed by the Legislature comply with the single subject requirement. Violation of this rule is a question of fundamental error. *State v. Johnson*, 616 So. 2d 1 (Fla. 1993).

The State's argument suggests the unreasonable premise that there are varying degrees of unconstitutionality. A legislative enactment is either unconstitutional or it is not.

Second, contrary to Regan's analysis, the reliance on the old rule is an issue here. The unconstitutional 1995 sentencing guidelines were in effect from October 1, 1995, to May 24, 1997. During this time, courts indisputably relied on these

guidelines and imposed sentences in accordance with its mandates. However, as set forth in Mr. Coppola's initial brief (pp. 17-18), reliance on the old rule was minimal, thus meeting the second prong of the Stovall v. Denno, 388 U.S. 293 (1967), test.

Finally, contrary to the reasoning in Regan, retroactive application of Heggs has minimal adverse effect on the administration of justice. That decision presents precisely the circumstance contemplated in Witt -- it is a constitutional change in the law. The fact that inmates' sentences imposed under the 1995 guidelines are unconstitutional cannot be minimized. Being sentenced under a guideline may not be a constitutional right, but when a sentence is actually imposed under a guideline and that guideline is determined to be unconstitutional, the unconstitutionality of the sentence must be rectified. This is precisely what this Court held in Trapp. Moreover, as this Court has further recognized, the fact that a number of inmates may have to be resentenced is necessary to rectify the single subject violation of the 1995 guidelines. "Had the Legislature not violated the single subject rule, we would not be here today." Thompson, 750 So. 2d at 649 (quoting State v. Johnson, 616 So. 2d 1, 4 (Fla. 1993)).

The State relies on two cases from this Court that have rejected the retroactivity of a judicial decision. The reasoning of those cases, however, does not apply here. In McCuiston v. State, 534 So. 2d 1144 (Fla. 1988), this Court

considered the retroactivity of its decision in Whitehead v. State, 498 So. 2d 863 (Fla. 1986), which held that finding a defendant to be a habitual offender is not a legally sufficient reason to depart from the recommended sentencing guidelines. In rejecting the retroactivity of that decision, this Court held that its decision in Whitehead was an evolutionary refinement as that decision merely clarified existing law. This Court reasoned:

After the sentencing guidelines were adopted in 1983, district courts of appeal were faced with many decisions concerning the propriety of reasons given for departing from the guidelines recommendations. Some of the reasons were approved, some were disapproved. When the several guidelines ultimately reached this Court, we disapproved as a legitimate basis for departure some of the reasons which had been found acceptable by the district courts of appeal. The fact that a defendant had been held to be an habitual offender was one of them.

McCuiston, 534 So. 2d at 1146. This Court further emphasized that it was clear that the inmate's sentence in that case was not illegal.

To the contrary, this Court's decision in Heggs did not clarify how the sentencing guidelines should be applied -- it invalidated the guidelines as unconstitutional. Unlike McCuiston's sentence, Mr. Coppola's sentence is indeed illegal.

The same is true for the State's reliance on Hughes v. State, 901 So. 2d 837 (Fla. 2005). In that case, this Court considered the retroactivity of Apprendi v. New Jersey, 530 U.S. 466 (2000). In rejecting the retroactivity of Apprendi, this

Court recognized that the effect of the Apprendi rule was solely to shift the factfinding responsibility from the judge to the jury and to increase the burden of proof for those facts that increase the penalty for a crime beyond its statutory maximum. Hughes, 901 So. 2d at 841. The decision thus clarified and extended the right to jury trial to require the State to prove convictions beyond a reasonable doubt, announcing an emerging right of procedural fairness that does not compel disruption of final judgments. Id. at 844.

As fully set out in Mr. Coppola's Initial Brief, the Heggs decision fits squarely within the types of cases in which Florida courts have found a decision retroactive under the Witt test. See, e.g., Ferguson v. State, 789 So. 2d 306 (Fla. 2001); Mitchell v. Moore, 786 So. 2d 521 (Fla. 2001); State v. Calloway, 658 So. 2d 983 (Fla. 1995), receded from on other grounds, Dixon v. State, 730 So. 2d 265 (Fla. 1999); Gantorious v. State, 693 So. 2d 1040 (Fla. 3d DCA 1997).

Applying the precedent of this Court and the district courts of appeal, Heggs should be applied retroactively.

CONCLUSION

Based on the foregoing, this Court should quash the decision under review, approve Murphy and Jenkins, and hold that Heggs applies retroactively. An inmate should have two years from the date of the Heggs decision to seek relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished by U.S. Mail to Kellie A. Nielan, Department of Legal Affairs, State of Florida, 444 Seabreeze Boulevard, Floor 5, Daytona Beach, FL 32118-3958, on November 3, 2005.

Christine R. Dean

CERTIFICATE OF FONT COMPLIANCE

I HEREBY FURTHER CERTIFY that the type size and style used throughout this brief is 14-point Times New Roman double-spaced, and that this brief fully complies with the requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

Christine R. Dean