

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

FSC Case No. SC03-2128
2DCA Case No. 2D01-5207

ADAM FREE SOUSA,

Respondent.

_____ /

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

PETITIONER'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

On August 15, 2003 the Second District Court of Appeal affirmed Respondent's convictions for two counts of attempted murder with a firearm and one count of aggravated assault with a firearm. However, the Second District remanded for Respondent's three consecutive minimum mandatory sentences to be served concurrently. The Second District determined the charged acts arose from a single criminal episode, and therefore the minimum mandatory portions of the sentence must be served concurrently. Sousa v. State, 28 Fla. L. Weekly D1909 (Fla. 2d DCA August 15, 2003). (Exhibit 1).

The charges arose out of a shooting spree involving three victims which occurred at the Naples-Fort Myers Greyhound Track on December 14, 1999. Respondent was charged by Amended Information as follows: Count I: Attempted Second Degree Murder with a Firearm (by shooting victim Phil Bocelli with a firearm); Count II: Attempted Second Degree Murder with a Firearm (by shooting victim Peter Verchick with a firearm); and Count III: Aggravated Assault with a Firearm (by threatening and aiming a firearm at victim Thomas Nagel). (V. 1: R. 9). Respondent was found guilty as charged. (V. 1: R: 57-58).

At the sentencing hearing the State sought to have the firearm minimum mandatory portions of the sentences run

consecutive to each other. Respondent argued that the charges arose out of a single criminal episode and should not be sentenced consecutively. (V. 2: R. 76-77). Sousa was sentenced as follows: Count I, attempted second degree murder: 50 years, with a 25 year minimum mandatory; Count II attempted second degree murder: 50 years, with a 25 year minimum mandatory; and Count III aggravated assault: 5 years, with a 3 year minimum mandatory. The minimum mandatory sentences for the use of a firearm were made consecutive pursuant to §775.087. However, the Second District opinion remanded for the minimum mandatory portions of the sentences to be served concurrently. (V. 2: R. 89-97). Sousa, supra.

Thomas Nagel testified that he was in charge of the valet for the clubhouse at the Bonita Springs dog track. On December 14, 1999, Nagel heard Respondent screaming as he came down the escalator. He asked Sousa what he was doing, and Sousa charged Nagel. (V. II: T. 232, 234). Phil Bocelli, head of security, approached. Respondent was holding a handgun two feet from Nagel's head. Bocelli went to grab Sousa's hand, the gun went off, and Bocelli was shot. Nagel testified he heard another gunshot about 2-3 minutes later. (V. II: T. 238-239).

Phillip Bocelli testified that he was a director of security at the Bonita Springs dog track. On December 14, 1999, he was

dressed in a shirt and tie, with a Security ID pinned to his shirt pocket. (V. 1: T. 76, 79). Bocelli came down the escalator, entered the lobby, and found an older man holding a younger man in a headlock. Respondent was holding a handgun. (V. I: T. 87-88). Bocelli saw Tom Nagel nearby. Nagel was pointing at the two individuals, and said "that fucking idiot put that gun to my head. (V. 1: T. 95). Bocelli approached Respondent who swung around and fired one shot, hitting Bocelli in the stomach. (V. I: T. 95-96). Respondent then stomped on Bocelli's head with his foot. Bocelli heard Peter Verchick yell "What are you doing there." Bocelli then heard another gun shot after he was down. (V. I: T. 100, 105).

Bocelli underwent 8-9 hours of surgery for a bullet wound to his small intestine, his right kidney and his pancreas. He was in the hospital about thirteen days. (V. 1: T. 130-133). He also had to be readmitted for about five weeks for further surgery. (V. 1: T. 134).

Peter Verchick testified he was the food and beverage director at the dog track. He came out of his office and saw Sousa moving towards Bocelli, who was on the floor. He asked what Sousa was doing and told him, "hey stop that." Respondent kicked Bocelli in the head. He then shot Verchick in the groin. (V. II: T. 272, 277, 295).

Ray Cousins testified he was a poker dealer at the track. On December 14, 1999, he came in contact with Respondent and his father, Henry Sousa, who were playing poker. (V. 1: T. 162). Respondent was not familiar with poker and was slow in his reactions. (V. 1: T. 166). Respondent was using vulgar language and was told it was not appropriate. (V. 1: T. 167). When Respondent refused to stop, Cousins contacted a supervisor. Floor manager Tom Coogan came over, and the Sousas left. Respondent seemed aggravated. (V. 1: T. 168, 169).

Tom Coogan testified he was the card room manager at the Naples Ft. Myers dog track. He was called to a table and observed Respondent. Respondent and his father then got up and left. Respondent did not take his chips with him. They appeared anxious. (V. 1: T. 186-187). He then heard shouting down the escalator. He went down and saw the Sousas, Bocelli, Nagel and Steve. He saw a gun and heard a shot. He believed Bocelli had been shot. (V. 1: T. 192). He went up the escalator and heard what he believed were two more shots. (V. 1: T. 193).

Respondent gave a statement to police in which he admitted shooting the victims, but claimed it was in self defense. (V. II: T. 397, 400, 402). Sgt. Ronald Curtis testified he interviewed Respondent. Respondent indicated he headed down the escalator, and a man charged him. There was also a second guy

charging him. (V. II: T. 396). He did not see them holding guns. (V. II: T. 397). He shot the first guy, then he fired another shot and hit another guy. (V. II: T. 400). He shot them because they were "aggressively charging him for no reason", and they had "no reasonable excuse" to hold him "down for any reason." (V. II: T. 401). Respondent has a permit to carry the gun. (V. II: T. 402).

Respondent's father testified the whole incident took about 6-7 seconds, and Respondent shot two people. (V. 3: T. 465-466). The jury returned guilty verdicts as charged. (V. 1: R. 57-58).

The State filed its Notice to Invoke on November 24, 2003. The State's Motion To Stay The Mandate was granted on December 8, 2003. On March 30, 2004, this Court accepted jurisdiction of this case.

SUMMARY OF ARGUMENT

The Second District opinion improperly reversed the defendant's consecutive minimum mandatory sentences. The opinion in Sousa is in direct and express conflict with this Court's holding in State v. Christian, 692 So. 2d 889 (Fla. 1997) as well as in contravention of the legislative intention as expressed in §775.087 and §775.021.

The trial court properly made the three minimum mandatory sentences consecutive to each other. Minimum mandatory sentences for offenses arising from a continuing episode may be served consecutively where the defendant shoots at multiple victims. Moreover, §775.087 gives the trial court discretion to impose such sentences.

ISSUE

WHETHER THE TRIAL COURT PROPERLY SENTENCED
THE DEFENDANT TO CONSECUTIVE MINIMUM
MANDATORY SENTENCES FOR OFFENSES ARISING
FROM THE SAME CRIMINAL EPISODE WHERE THERE
WERE MULTIPLE VICTIMS?

In Sousa v. State, 28 Fla. L. Weekly D1909 (Fla. 2d DCA August 15, 2003), the Second District affirmed Respondent's convictions for two counts of attempted murder with a firearm and one count of aggravated assault with a firearm. However, the Second District remanded for the firearm minimum mandatory portions of the sentences to be served concurrently rather than consecutively.

The Second District opinion in Sousa is incorrect. The Sousa court ignored prior Florida Supreme Court precedent and the legislative intent as set forth in §775.087. The minimum mandatory portions of Sousa's sentence were properly run consecutive on two grounds:

1) Pursuant to prior Florida Supreme Court precedent, minimum mandatory sentences may be run consecutive to each other for crimes arising from a single criminal episode where there are multiple victims. State v. Christian, 692 So. 2d 889 (Fla. 1997); and/or

2) Section 775.087(2)(d), Fla. Stat.(1999) provides legislative authorization to run the sentences consecutive.

Sousa received the minimum mandatory sentences pursuant to

the enhancement provisions of §775.087, Fla. Stat.(1999).

Section 775.087(2)(d) reads:

It is the intent of the Legislature that offenders who actually possess, carry, display, use, threaten to use, or attempt to use firearms or destructive devices be punished to the fullest extent of the law, and the minimum terms of imprisonment imposed pursuant to this subsection shall be imposed for each qualifying felony count for which the person is convicted. The court **shall** impose any term of imprisonment provided for in this subsection consecutively to **any other** term of imprisonment imposed for **any other** felony offense.

(Emphasis supplied). Sousa argued that despite the above language, the trial court was prohibited from imposing consecutive sentences. The Second District determined "the last sentence of section 775.087(2)(d) means that sentences received pursuant to section 775.087(2)(d) must only be consecutive to other felony sentences not subject to section 775.087(2)(d)." Sousa, supra. The Second District relied upon Mondesir v. State, 814 So. 2d 1172 (Fla. 3d DCA 2002) and remanded for resentencing.

In Mondesir, the Third District interpreted the "any other" language in the statute to apply only to another separate crime, rather than those involved in a single prosecution. In Mondesir, the defendant was on probation for possession of

cocaine with intent to sell when he committed four new crimes during which he used a firearm. The trial court revoked his probation, and the sentence on the cocaine charge was made to run concurrent to the four new firearm offenses. The four firearm offenses were further made concurrent to each other. The Third District held §775.087 required only the new firearm sentences be served consecutive to the cocaine offense, while the new firearm offenses were to be served concurrently to each other.

The Second District's reliance upon Mondesir is misplaced and ignores longstanding case law from this Court recognizing the propriety of consecutive minimum mandatory sentences for crimes involving multiple victims. This Court has held that such minimum mandatory sentences are properly sentenced consecutively when there are multiple victims involved in a single episode. State v. Christian, 692 So. 2d 889 (Fla. 1997).

In Christian, supra, this court held that the minimum mandatory sentences for second degree murder with a firearm and attempted second degree murder with a firearm were to be sentenced consecutively. Christian involved a single continuous episode with two separate victims. The instant case, while arguably a single criminal episode, nonetheless involved three separate and distinct victims injured in Respondent's shooting

spree.

As a general rule, for offenses arising from a single episode, stacking is permissible where the violations of the mandatory minimum statutes cause injury to multiple victims,¹ or multiple injuries to one victim. (Footnote omitted). The injuries bifurcate the crimes for stacking purposes. (Footnote omitted). **The stacking of firearm mandatory minimum terms thus is permissible where the defendant shoots at multiple victims,² and impermissible where the defendant does not fire the weapon.³** (Emphasis added).

Christian, 692 So. 2d at 890.

This Court has previously held that minimum mandatory sentences involving a single episode are generally to be

¹See, Downs v. State, 616 So. 2d 444 (Fla. 1993), approved, 616 So. 2d 444 (Fla. 1993) (approving stacking of one twenty-five year capital felony mandatory minimum term with one three-year firearm mandatory minimum term where defendant killed woman and committed aggravated assault on witness); State v. Enmund, 476 So. 2d 165 (Fla. 1985) (approving stacking of two capital felony mandatory minimum terms where defendant committed two homicides).

²The injury may consist of the heightened danger caused by a fired weapon. State v. Thomas, 487 So. 2d 1043 (Fla. 1986) (approving stacking two firearm mandatory minimum terms where defendant shot woman and shot at but missed her son).

³See State v. Ames, 467 So. 2d 994 (Fla. 1985) (disapproving stacking of two firearm mandatory minimum terms where defendant committed burglary, robbery, and sexual battery on same victim, without firing weapon); Palmer v. State, 438 So. 2d 1 (Fla. 1983) (disapproving stacking of thirteen firearm mandatory minimum terms where defendant robbed thirteen mourners in funeral home, without firing weapon).

sentenced concurrently. Hale v. State, 630 So. 2d 521 (Fla. 1993)(disapproving stacking of two habitual offender sentences). However, where there are separate victims and the weapon is actually fired, Christian controls. To sentence Respondent to three concurrent sentences when there are three separate victims involved in three separate acts is contrary to prior case law as well as in direct contrast to the legislative intent as set forth by § 775.087. Here, the trial court properly made the minimum mandatory sentences consecutive.

Section 775.087 provides "The court **shall** impose any term of imprisonment provided for in this subsection consecutively to **any other** term of imprisonment imposed for **any other** felony offense." It is therefore undisputed that consecutive sentencing is permitted with regard to crimes arising from a different prosecution.

To determine the legislative intent regarding the stacking of minimum mandatory sentences in the same prosecution, the court in Sousa looked to the legislative history. In the comments to its Final Analysis of CS/CS/HB 113 (SB 194), which became Chapter 99-12, Laws of Florida, and subsection 775.087(2), the Committee on Crime and Punishment in the House of Representatives so stated:

Consecutive Sentences:
The bill provides that the Legislature

intends for the new minimum mandatory sentences to be imposed for each qualifying count, and the court is required to impose the minimum mandatory sentences required by the bill consecutive to any other term of imprisonment imposed for any other felony offense. **This provision does not explicitly prohibit a judge from imposing the minimum mandatory sentences concurrent to each other.**

(Emphasis added). The Second District determined this language did not sufficiently provide the authority to the courts to make the sentences consecutive. Petitioner disagrees with this analysis. Clearly this language does not represent an intent on the part of the legislature to repudiate this Court's holding in Christian. Under the analysis established in Christian, the stacking of minimum mandatory sentences is permissive, depending on the presence of multiple victims and the firearm actually being fired. Accordingly a trial court must look to the legislative intent and case law to determine the propriety of stacking firearm minimum mandatory sentences.

In Elozar v. State, 29 Fla. L. Weekly D759 (Fla. 5th DCA March 26, 2004), the Fifth District reversed the defendant's consecutive minimum mandatory sentences involving two counts of robbery with a firearm. Elozar was sentenced pursuant to §775.087(2)(d). The Fifth District then attempted to discern the legislative intent of 775.087. "To determine legislative intent, [a court] must consider the act as a whole--'the evil to

be corrected, the language of the act, including its title, the history of its enactment, and the state of the law already in existence bearing on the subject.'" State v. Webb, 398 So. 2d 820, 824 (Fla. 1981).

Section 775.087(2)(d) clearly seeks to punish the use of firearms by felons during the commission of certain crimes. Moreover, the Legislature intended the harshest penalty for felons who use firearms. Therefore, it is reasonable that the legislature sought to sentence minimum mandatory sentences consecutively in the appropriate circumstances. Elozar, supra.

In Elozar, supra, the court further determined that prior to the 1999 enactment of the statute, minimum mandatory sentences could not be imposed consecutively for offenses that arose out of the same criminal episode, pursuant to Section 775.087(2), Florida Statutes (1981). Palmer v. State, 438 So. 2d 1 (Fla. 1983). This Court in Palmer found no express legislative authorization for the stacking of minimum mandatory sentences arising from the same criminal episode. The courts in Sousa, Mondesir, and Elozar again found no express legislative authorization for the stacking of the firearm minimum mandatories in the amended statute. Even assuming there is no express legislative authority for such sentences, the Elozar

opinion points to the holding in Christian to establish the state of the law prior to the enactment of the statute.

After analyzing the language of the statute and the state of the law at the time it was enacted, the courts are still unable to find legislative authority in section 775.087(2)(d) for consecutive minimum mandatory sentences for offenses arising out of the same criminal episode. **Therefore, the rationale of the court in Christian and Palmer remains applicable when determining whether consecutive minimum mandatory sentences for firearm offenses are appropriate.** (Emphasis added).

Elozar, supra. Accordingly, in the instant case, where there were three separate victims and Sousa fired the gun two times, stacking is permitted.

The Second District opinion points to the express language of the statute and the legislative intent as described in §775.087(2)(d) to justify the imposition of a concurrent sentence in this matter. However, §775.087(2)(d) also provides that the legislature intends that violators of this statute "be punished to the fullest extent of the law." Moreover, Fla. Stat. § 775.021 (2001) also provides: RULES OF CONSTRUCTION:

(4) (a) Whoever, in the course of **one criminal transaction or episode**, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the **sentencing judge may order the sentences to be served concurrently or**

consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial.

(b) The intent of the Legislature is to convict and sentence for each criminal offense committed in the course of one criminal episode or transaction and **not to allow the principle of lenity** as set forth in subsection (1) to determine legislative intent. Exceptions to this rule of construction are:

1. Offenses which require identical elements of proof.
2. Offenses which are degrees of the same offense as provided by statute.
3. Offenses which are lesser offenses the statutory elements of which are subsumed by the greater offense.
... (Emphasis added).

Accordingly the rule of lenity does not apply (other than to the exceptions so listed) to an analysis of stacking offenses. Rather, the legislature has expressed its desire to "convict and sentence for each criminal offense committed in the course of one criminal episode."

For offenses arising from a single episode, the legislature has allowed the trial court to have discretion in sentencing consecutive or concurrent based upon the particular circumstances of each case. Therefore in order to determine when it is proper to sentence consecutively, this Court's

holding in Christian is instructive. See also, Lifred v. State, 643 So. 2d 94(Fla. 4th DCA 1994), approved by State v. Christian, 692 So. 2d 889 (Fla. 1997)(trial court had discretion under Fla. Stat. ch. 775.087(2) to impose consecutive mandatory minimum terms on defendant for the crimes of attempted murder with a firearm of one victim and aggravated battery with a firearm of a second victim, because both occurred during the course of an armed robbery of both victims, and the firearm was discharged twice, resulting in injury to two victims); State v. Parker, 812 So. 2d 495 (Fla. 4th DCA 2002)(stacking of firearm mandatory minimum terms thus is permissible where the defendant shoots at multiple victims, and impermissible where the defendant does not fire the weapon).

In Newton v. State, 603 So. 2d 558 (Fla. 4th DCA 1992), approved, 594 So. 2d 306 (Fla. 1992), the Court upheld the three consecutive 25 year minimum mandatory sentences. The factual scenario described in Newton is similar to the instant case. Newton "committed three separate and distinct offenses. After firing at Officer Indian, he turned and fired at Officer Hawkins. As Newton fled, he fired another shot at Officers Indian and Hawkins. After being spotted running through a field, he fired a shot at Officer Justice." Newton was properly sentenced to three consecutive 25 year minimum mandatories.

The facts in the instant case similarly demonstrate three separate and distinct offenses with three separate victims. Thomas Nagel testified that he heard Sousa screaming as he came down the escalator. He asked Sousa what he was doing, and Sousa charged Nagel's table. Sousa then pointed a firearm at Nagel's head. Phil Bocelli, head of security, approached. Bocelli saw Sousa holding a handgun two feet from Nagel's head. Bocelli went to grab Sousa's hand, the gun went off, and Bocelli was shot in the stomach. Sousa then stomped on Bocelli's head with his foot. Bocelli then heard another gun shot after he was down.

Peter Verchick testified he came out of his office and saw Sousa moving towards Bocelli, who was on the floor. He asked what Sousa was doing and told him, "hey stop that." Sousa kicked Bocelli in the head. Sousa then shot Verchick in the groin.

The testimony establishes three separate and distinct offenses. Nagel testified there was a 2-3 minute gap between gunshots. Sousa's father testified there was a 6-7 second time frame involved. Sousa put the gun in Nagel's face. Sousa then shot Bocelli as they scuffled. He then kicked the prone Bocelli in the head. Only then did Sousa shoot Peter Verchick in the groin. Accordingly, prior case law as well as legislative

intent support sentencing the minimum mandatory portions of these sentences consecutively.

In Stafford v. State, 818 So. 2d 693 (Fla. 5th DCA 2002), the court adopted the rationale of the Third District in Mondesir. The trial court in Stafford mistakenly believed it had to sentence armed burglary and armed robbery convictions consecutively pursuant to §775.087. The case was remanded for the court to exercise its discretion in determining if consecutive sentences were proper. Similarly in Arutyunyan v. State, 863 So. 2d 410 (Fla. 4th DCA 2003), the defendant was convicted of attempted first degree murder with a firearm, shooting into an occupied building, and grand theft with a firearm. The twenty year minimum mandatory for the attempted first degree murder was sentenced consecutive to the other two minimum mandatory sentences. The trial court believed it had no discretion and was required to run the sentences consecutive. However, pursuant to Mondesir, the Fourth District remanded to allow the trial court the opportunity to opt for concurrent sentencing, or once again run the sentences consecutive. In the instant case, the trial court properly exercised its discretion in determining the propriety of consecutive minimum mandatory sentences.

The cases the Second District relied upon in Sousa, are

distinguishable. Mondesir did not involve the firing of the gun. Moreover, there were not multiple victims in Mondesir. In Palmer, supra, although there were thirteen victims of the robbery, the defendant did not use the firearm. This was a key reason this Court distinguished Palmer in its decision in Christian. In Green v. State, 845 So. 2d 895 (Fla. 3d DCA 2003) it is apparent that no firearm was fired in the commission of the charged felonies. Therefore, the appellate courts made the sentences concurrent.

In Hayes v. State, 803 So. 2d 695, 698 (Fla. 2001), this Court found there was no double jeopardy violation for convictions for armed robbery and grand theft motor vehicle. The defendant robbed the victim in the victim's residence, taking a number of items, including the victim's car keys. The defendant then went outside the residence and took the victim's automobile. The "power to define criminal offenses and to prescribe the punishments to be imposed upon those found guilty of them, resides wholly with the legislature." Courts should look to whether there was a separation of time, place, or circumstances between the initial armed robbery and the subsequent grand theft, as those factors are objective criteria utilized to determine whether there are distinct and independent criminal acts or whether there is one continuous criminal act

with a single criminal intent. Applying the same rationale to the instant facts, and the analysis of Christian, stacking is proper.

Moreover, in light of the legislative amendments to §775.087 and §775.021, the continued viability of Palmer, supra is in question. In Palmer this Court ordered the firearm minimum mandatory portions of the sentence to be served concurrently rather than consecutively. This Court applied the rule of lenity in favor of Palmer. Moreover, this Court's statutory construction determined "nowhere in the language of section 775.087 (1981) do we find the express authority by which a trial court may deny, under subsection 775.087(2), a defendant eligibility for parole for a period greater than three calendar years." Palmer, 438 So. 2d at 3. The Second District in Sousa and the Third District in Mondesir determined that there **still** was no legislative authorization to require consecutive sentencing. Petitioner disagrees with this analysis. Section 775.087, Florida Statutes (1999) does contain legislative authorization for stacking of such sentences.

While §775.087 may not **require** consecutive sentencing for crimes committed in a single episode, the legislature has allowed the trial court to exercise its discretion in determining the propriety of stacking such sentences. The

legislature has remedied the infirmity this Court discussed in Palmer. The current legislative amendments **do** provide the express authority for a trial court to stack sentences even when committed in the same criminal episode.

In Perrault v. State, 853 So. 2d 604 (Fla. 5th DCA 2003), the appellate court remanded for the trial court to determine if the crimes occurred during the same criminal episode. The concurrence in Perrault pointed out that §775.087(2)(d) **could** represent the legislature's repudiation of the Palmer decision. However, the concurrence determined that the legislature did not make such repudiation clear, and in light of the rule of lenity, ruled in favor of the defendant. Perrault, 853 So. 2d at 607 (Orfinger, J. concurring).

Petitioner submits that the legislature has set forth the guidelines to be employed by a trial court when sentencing for acts in one criminal episode. The legislature acknowledges the rule of lenity in §775.021(1). However, the rule of lenity is not to be employed when convicting and sentencing for one criminal episode. See §775.021(4)(b). Moreover, the legislature acknowledges a defendant's constitutionally protected double jeopardy rights in 775.021(4)(b). However, absent double jeopardy implications, the legislature has allowed for a trial judge to use its discretion in stacking sentences. "It is

within the Legislature's discretion to authorize consecutive minimum mandatory sentences, even for crimes arising out of a single incident, provided, of course that a defendant's double jeopardy protections are not violated. Perrault, supra. Here, the legislature has set forth the guidelines and authority for a trial court to impose consecutive minimum mandatory sentences, while still affording double jeopardy protection. When §775.087 and §775.021 are read in pari materia, the legislature has sufficiently set forth the authority for such sentencing. Thus, a trial court's stacking of sentences is permissive and subject to an abuse of discretion standard, based upon the particular facts of the case.

This Court, in Christian, supra, set forth the test for the stacking of firearm minimum mandatory sentences for offenses arising from a single episode: Consecutive sentences are proper where the offenses cause injury to multiple victims or multiple injuries to one victim. Stacking is permissible where the defendant shoots at multiple victims. Stacking is impermissible where the weapon is not fired. Here, Sousa shot two separate victims, and committed aggravated assault on another victim while holding the firearm. Therefore, the sentences were properly made to run consecutive to each other.

Accordingly, Petitioner submits that the Second District

Court of Appeal's decision is incorrect. The holding in Sousa misinterprets the legislative intent of Section 775.087 and ignores this Court's holding in Christian.

CONCLUSION

In conclusion, the State respectfully requests that this Honorable Court affirm the trial court's imposition of consecutive minimum mandatory sentences and reverse the decision of the Second District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief on the Merits has been furnished by U.S. mail to Bruno F. DeZayas, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33831-9000, this 27th day of April 2004.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

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