

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No. SC04-102

WILLIAM E. TEAL,
Petitioner,

v.

STATE OF FLORIDA
Respondent.

PETITIONER'S SUPPLEMENTAL INITIAL BRIEF

ON DISCRETIONARY REVIEW FROM THE
SECOND DISTRICT COURT OF APPEAL

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ARGUMENT

THE IMPLICATION OF THIS COURT'S RULING IN *STATE V. RICHARDSON*, 30 FLA.L.WKLY. S616 (FLA. SEPT. 8, 2005)

In *State v. Richardson*, 30 Fla. L. Wkly. S616 (Fla. Sept. 8, 2005), this Honorable Court held that the imposition of probation on April 14, 1993 was a *sentence* meeting the requirement of [Fla. Stat. 775.084](#) (5). This Court also held that pursuant to Fla. R. Crim. P. 3.700(a) a sentence is defined as the pronouncement of the penalty imposed by the court.

The facts in both the *Richardson* case and the case sub judice are distinguishable. In *Richardson* the defendant was placed on probation for possession of cocaine in 1993. While on probation the defendant was convicted of grand theft. On the same date the defendant was sentenced on the violation and the new charge. These two convictions subsequently became the basis to find the defendant was a habitual felony offender in 2000 on a robbery charge.

In the case sub judice the Appellant was found to be a habitual felony offender based upon a charge the Appellant was *currently* serving a probation term. The Appellant was then sentenced on the violation of probation and the new charge as an HFO on the same date.

However, the Appellant respectfully submits that the holding in [Richardson](#)

[v. State, 2005 WL 2155200 \(Fla. 2005\)](#) seems to indicate that when the Appellant was placed on probation in 1993 that consisted of a prior sentence pursuant to [Fla. Stat. §775.084](#). However, the Appellant respectfully disagrees with this Court's holding in *Richardson*.

Criminal statutes must be strictly construed. “In its application to penal and criminal statutes, the due process requirement of definiteness is of especial importance.” [Perkins v. State, 576 So.2d 1310, 1312 \(Fla. 1991\)](#). “[T]he statute must be construed in the manner most favorable to the accused.” [Richardson v. State, 884 So.2d 950 \(Fla. 4th DCA 2003\)](#). See also [Fla. Stat. §775.021\(1\) \(2002\)](#); *Perkins* at 1312. The court may not add words to a statute where the language is clear and unambiguous. See [State v. Burris, 874 So.2d 408 \(Fla. 2004\)](#). The court may not look to the rules of statutory construction when the language is clear and unambiguous. The statute must be given its plain and obvious meaning. See [State v. Egan, 287 So.2d 1, 4 \(Fla. 1973\)](#).

Florida Statute §775.084 (5) reads:

In order to be counted as a prior felony for purposes of sentencing under this section, the felony must have resulted in a conviction *sentenced separately prior to the current offense* and sentenced separately from any other felony conviction that is to be counted as a prior felony.

[Fla. Stat. §775.084 \(5\) \(2002\)](#). (Emphasis added.)

As required by strict construction this means that the placement of Mr. Teal on community control may have been a conviction but was not a sentence. Section 775.084 (5) requires a separate sentence. Mr. Teal was “sentenced” in CRC91-20507CFANO on February 28, 1997 when he was given five years and six months on the violation of community control.¹ This was the same date that he was sentenced in CRC96-13470CFANO. Therefore, Mr. Teal did not have the separate prior sentencing sufficient to sustain the designation as a habitual offender and his case should be remanded to strike his designation. Mr. Teal should then be sentenced within the applicable guidelines.

CONCLUSION

Based upon the foregoing arguments the Petitioner respectfully requests this Court to strike the habitual offender designation and remand the Petitioner back to the sentencing court for the imposition of a guideline sentence.

Respectfully submitted,

Heather M. Gray

¹ This sentence was modified on July 23, 2001 to 33.2 months.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Dale E. Tarpley at the Attorney General's Office, 3507 East Frontage Road, Suite 200, Tampa, Florida 33607-1793, by U.S. mail on this 16th day of January 2006.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief conforms with and satisfies the requirements of [Florida Rules of Appellate Procedure 9.100\(1\)](#) and 9.210(a) (2).

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