

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

RANSOM LOUIS COLLINS,

Respondent.

Case No. SC05-108

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

PETITIONER-S REPLY BRIEF

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SUMMARY OF THE ARGUMENT (REPLY)

Contrary to respondent's argument, there are no double jeopardy implications in allowing the State another opportunity at resentencing to establish the respondent's qualifications to be sentenced as a habitual felony offender because a sentence does not have the constitutional finality that applies to an acquittal. There can be no due process violation as long as the trial court, on remand, does not impose a greater sentence than was originally imposed.

ARGUMENT

ISSUE

WHEN AN APPROPRIATE OBJECTION TO A HABITUAL OFFENDER SENTENCE IS PRESENTED TO THE TRIAL COURT AND DENIED AND THE DISTRICT COURT OF APPEAL REVERSES AND REMANDS FOR RESENTENCING, MAY THE TRIAL COURT AGAIN IMPOSE A HABITUAL OFFENDER SENTENCE UPON PROPER EVIDENCE BEING PRESENTED BY THE STATE.

The standard of review is de novo.

This court has recognized a defendant has no reasonable expectation of finality in his sentence particularly in a case where he was the party that challenged the sentence on appeal. Trotter v. State, 825 So. 2d 362 (Fla. 2002); Harris v. State, 645 So. 2d 386 (Fla. 1994). The United States Supreme Court has also recognized, "This Court's decisions in the sentencing area clearly establish that a sentence does not have the qualities of constitutional finality that attend an acquittal." United States v. DiFrancesco, 449 U.S. 117, 134, 101 S.Ct. 426, 66 L.Ed.2d 328, 344 (1980).

Petitioner would again rely upon the reasoning of the Fourth District in Cameron v. State, 807 So. 2d 746, at 747-748 (Fla. 4th DCA 2002):

We have held a resentencing following reversal is a new proceeding. See Altman v. State, 756 So. 2d 148 (Fla. 4th DCA 2000). Accordingly, the State will be provided the opportunity to introduce evidence

establishing the grounds for rehabilitation... Upon remand, the trial court will once again have the discretion to sentence Cameron as a HFO upon proper proof and findings of fact.

There is no due process violation in permitting the trial court to impose the same habitual offender on remand upon proper proof by the State that the respondent qualifies for habitual offender sentencing. A due process violation would only occur if the trial court were to impose a greater sentence. See Trotter, *supra*. At 368-239.

CONCLUSION

Petitioner respectfully requests this Honorable Court reverse the decision of the Second District in the instant case and hold regardless of whether an appropriate objection to habitualization was made at the sentencing hearing, upon reversal and remand for resentencing due the State's failure to establish defendant's qualification for habitualization, the State may again seek habitualization upon proper proof and findings of fact.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished by U.S. mail to Tosha Cohen, Assistant Public Defender, P.O. Box 9000^CDrawer PD, Bartow, Florida 33831-9000, this 21st of March 2006.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY 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).

Respectfully submitted,

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