IN THE SUPREME COURT OF THE STATE OF FLORIDA

RICKY BRADLEY,

Petitioner,

v. S. Ct. Case No.SC08-196

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT

PETITIONER'S REPLY BRIEF

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT WHEREIN AN INFORMATION FAILS TO ALLEGE THAT A DEFENDANT DISCHARGED A FIREARM, IT IS IMPROPER TO IMPOSE THE MANDATORY SENTENCING PROVISIONS OF THE 10/20/LIFE STATUTE FOR DISCHARGING A FIREARM.

Respondent initially argues that this Court should discharge jurisdiction because there is no conflict between the case below and ***Jackson v. State***, 852 So. 2d 941 (Fla. 4th DCA 2003) review denied 869 So. 2d 540 (Fla. 2004). In so doing, respondent states:

> In Jackson, there was neither a stipulation during the plea colloquy to the fact that the firearm at issue was discharged nor was there any discussion on the record regarding the applicability of the twenty year minimum3 mandatory sentence for discharge of a firearm.

(Brief of Respondent page 7). First, the issue in ***Jackson*** was the mandatory minimum sentencing for discharge of a firearm causing death or great bodily harm. Second, the plea colloquy set forth in the opinion clearly shows that the prosecutor, **during the plea colloquy,** informed the Court that the mandatory minimum sentence would be the twenty-five to life provision under the 10/20 /Life statute. The Court then asked Jackson whether he understood that he would be sentenced to a mandatory minimum twenty-five years in the Department of Corrections to

which Jackson replied in the affirmative. At sentencing, the parties again discussed the applicable sentencing provisions and the prosecutor once again argued that Jackson was subject to the minimum twenty-five to life provision under the 10/20/Life statute. The trial court specifically asked defense counsel if he concurred with that to which defense counsel replied " Yes, Your Honor." So, not only was there discussion of the minimum mandatory sentencing there was specific agreement to such sentencing in ***Jackson***. Thus, the facts in ***Jackson*** are identical to the facts below and the Fifth District was correct in certifying conflict.

Next, respondent argues that because petitioner was on actual notice that the firearm was discharged, it was unnecessary for the State to allege this in the information as the plea colloquy constituted an implicit amendment of the information. In so arguing, respondent notes the Fifth District's criticism of ***Jackson*** as placing "a premium on form at the expense of substance." (***Bradley v. State***, 971 So. 2d 957, 961(Fla. 5th DCA 2007) However, this argument ignores the requirement by the State to allege the necessary factual predicates in the information if they are seeking reclassification of the crime under the 10/20/Life law, as these facts are treated as "essential terms." ***Koch v. State***, 874 So. 2d 606 (Fla. 5th DCA 2004); ***Jackson v. State***, 852 So. 2d 941 (Fla. 4th DCA 2003); ***Davis***

V. State, 884 So. 2d 1058 (Fla. 2nd DCA 2004); ***Mobley v. State***, 939 So 2d 213 (Fla. 1st DCA 2006). The decision by the Fifth District to approve the practice of "implicit amendment" of informations should not be condoned. A decision to seek enhanced penalties or mandatory minimum penalties is not a sentencing decision. Rather it is a decision in the nature of a charging decision which is solely in the discretion of the state attorney. ***Young v. State***, 699 So. 2d 624 (Fla. 1997); ***Cleveland v. State***, 417 So. 2d 653 (Fla. 1982) ("state attorney has complete discretion in making decisions to charge and prosecute.") ; ***McKnight v. State***, 727 So. 2d 314 (Fla. 3rd DCA 1999) approved 769 So.2d 1039 (Fla. 2000).

Respondent further argues that a minimum mandatory sentence imposed under the 10/20/Life statute where the predicate facts are not alleged in the information is not an illegal sentence. (Brief of respondent page 18) However, the imposition of a mandatory minimum sentence where the information did not contain the grounds for enhancement renders the sentence illegal. ***Whitehead v. State***, 884 So. 2d 139 (Fla. 2nd DCA 2004); ***Jackson supra.*** A defendant cannot agree to an illegal sentence. ***Mobley supra; Leavitt v. State***, 810 So. 2d 1032 (Fla. 1st DCA 2002) For instance, even if a defendant explicitly agrees to a twenty year sentence for a third degree felony, even respondent would have to agree that such sentence was illegal.

Finally, petitioner notes that the requirements to allege the necessary facts to support the application of the mandatory minimum sentences is not new law. The matter below could have simply been avoided had the State filed an amended information. Given the total discretion the State has in filing charges, it is not unreasonable to require them to do their job properly. It certainly is not an extraordinary burden on the State to simply file an amended information properly alleging the essential elements necessary to support a plea and sentence. This Court should require nothing less.

CONCLUSION

Based on the foregoing reasons and authorities cited herein as well as in the initial brief, petitioner respectfully requests this Honorable Court to quash the decision of the Fifth District Court of Appeal and remand the cause with instructions remove the mandatory minimum sentence for discharge of a weapon.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to: The Honorable Bill McCollum., 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal, and mailed to Ricky Bradley, DC# 167298, Columbia C. I., 216 S E Corrections Way, Lake City, FL 32025 on this 2nd day of June, 2008.

MICHAEL S. BECKER FOR:
REBECCA M. BECKER
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is 14 point Times New Roman font.

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