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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-258

Lower Tribunal No. 3D12-1996

VIRGIL LEE HARRIS,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ANSWER BRIEF ON THE MERITS

ON PETITION FOR DISCRETIONARY REVIEW FROM

THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases **Page**

RULES, STATUTES AND MISCELLANEOUS

STATEMENT OF THE CASE AND FACTS

The history of the case is set out in the petitioner's initial brief on the merits and is hereby adopted, unless it is corrected or modified in the Argument section below.

SUMMARY OF THE ARGUMENT

The state's appeal of the postconviction court's order was proper because postconviction collateral remedies are not steps in a criminal prosecution, but are in the nature of independent collateral civil actions governed by the practice of appeals in civil actions from which either the government or the defendant may appeal.

ARGUMENT

THE POSTCONVICTION COURT ERRED BY GRANTING THE RULE 3.800(a) MOTION IN PART BECAUSE THE SENTENCING COURT'S INTENTION TO SENTENCE THE PETITIONER AS A VCC WAS SUFFICIENTLY DISCERNABLE FROM THE TRANSCRIPT OF THE SENTENCING HEARING, AND IT WAS SUBJECT TO APPEAL BY THE STATE BECAUSE THIS COURT HAS HELD THAT POSTCONVICTION COLLATERAL REMEDIES ARE IN THE NATURE OF INDEPENDENT COLLATERAL CIVIL ACTIONS GOVERNED BY THE PRACTICE OF APPEALS IN CIVIL ACTIONS FROM WHICH EITHER THE GOVERNMENT OR THE DEFENDANT MAY APPEAL.

The petitioner claims that the postconviction court granted his Rule 3.800(a) motion in part and struck his designation as a violent career criminal (VCC), but left his life sentences intact, and the state appealed that order. He argues that because the postconviction court did not impose an illegal sentence, the state had no right to appeal, and this Court must dismiss the case.

The postconviction court stated in its Rule 3.800(a) order that the petitioner claimed in his Rule 3.800(a) motion that the trial court determined that he qualified as a habitual violent offender (HVO) and a violent career criminal (VCC), but failed to specifically pronounce sentence on the petitioner at the hearing as a VCC on counts 1, 2 and 6, although the written sentence does indicate he was sentenced on those counts as a VCC, and his sentence should therefore be vacated. (R.144).

The postconviction court ruled in its Rule 3.800(a) order that because a court's oral pronouncement of a sentence controls over a written sentencing document, the VCC designation shall be stricken from the petitioner's sentence as to those counts. (R.144).

In the Third District Court of Appeal, the state appealed the postconviction court's order and argued that a review of the hearing transcript shows that the trial court's intention to sentence the petitioner as a VCC on Counts 1, 2 and 6 was clearly discernible from the record and that the Rule 3.800(a) order was in error.

The problem with the postconviction court's Rule 3.800(a) order was that the trial court *did* state at the sentencing hearing that the petitioner qualified as both an HVO and VCC (R.54) and the trial court's intention to sentence the petitioner as a VCC on Counts 1, 2 and 6 was clearly discernible from the record. (R.55).

Florida law is clear that when a trial judge's oral pronouncement of a sentence is ambiguous, but the judge's intention is discernible from the record, the proper sentence is what the judge intended it to be. Harris v. State, 129 So.3d 1166 (Fla. 3d DCA 2014), Jackson v. State, 615 So.2d 850, 851

(Fla. 2d DCA 1993), *See* Gunn v. State, 970 So.2d 862, 863 (Fla. 4th DCA 2008), Henry v. State, 930 So.2d 716, 718 (Fla. 1st DCA 2006). In the instant case, the trial court's intention is clearly discernible from the record and therefore the sentence is what the judge intended, that the petitioner was sentenced as a VCC on counts 1, 2 and 6.

At the sentencing hearing the state explained to the trial court that the petitioner qualified as a VCC on all counts and argued the jury returned verdicts with the highest degree of guilt for each count and that the court has to review this case in light of Fla. Stat. 775.084 to determine if the petitioner qualifies as a career criminal on all counts. (R.49,51-52, Defendant's Exhibit A). The trial court explained to the petitioner that he has to review this case in light of Fla. Stat. 775.084 as the state has presented to determine whether or not he qualified as a career criminal under the statute and the court has reviewed the statute. (R.52, Defendant's Exhibit A).

The trial court explained to the petitioner that his sentencing is based on the six counts that he was found guilty of, plus all of his priors. (R.53, Defendant's Exhibit A). The trial court then informed the petitioner that he has for 20 years gone through this community and in Georgia and committed violent crimes against people and the last crime was against two

people well in their 70s, again another robbery. The trial court then stated directly to the petitioner that it prayed to God there is hope for the petitioner in there, but there is no hope for him outside this Court. (R.54, Defendant's Exhibit A).

The trial court ruled that based on Sec. 775.084, the petitioner meets the criteria for life imprisonment on count 1 and 2, consecutive life in prison. On count 3, 15 years to run concurrent with counts 1 and 2. Count 4, to 15 years as a career criminal to run concurrent with counts 1, 2, 3 and 4. Count 6, life in prison to run concurrent with counts 1 and 2. (R.55, Defendant's Exhibit A). The trial court stated that, without a doubt, he is finding the sentences are necessary for the protection of the public and that it meets the criteria.[1]

A review of the petitioner's Exhibit A, a partial sentencing transcript which is attached to the Rule 3.800(a) motion, reveals that the trial court stated that the petitioner qualified as both an HVO and a VCC (R.54) and was then immediately sentenced at the hearing on all counts as a VCC.

[1] Sec. 775.084(3)(b)5, Fla. Stat. provides that if the state attorney pursues a violent career criminal sanction and the court determines that the defendant meets the criteria, the court *must* sentence the defendant as a violent career criminal unless it finds that the sentence is not necessary for the protection of the public.

(R.55). In the written order, he was also sentenced as a VCC on all counts. (R.57-60, Defendant's Exhibit B).

Under the totality of the circumstances at the sentencing hearing, including the state's argument that the trial court should sentence the petitioner as a VCC on all counts, the judge's explanation to the petitioner that he has to review the habitualization statute to determine if the petitioner qualifies as a VCC on all counts, and the trial court's finding that the sentences are necessary for the protection of the public and that it meets the criteria for VCC sentencing, the trial court's intention to sentence the defendant as a VCC on counts 1, 2 and 6 is clearly discernible.

The state did not appeal the Rule 3.800(a) order because it was an illegal sentence but because the Rule 3.800(a) order was faulty. It was faulty because the trial court *did* orally sentence the petitioner as a VCC and it was clearly discernible from the record (R.55), but the Rule 3.800(a) order ruled that the trial court did not orally pronounce a VCC sentence upon the petitioner.

This Court has decided that postconviction collateral remedies are not steps in a criminal prosecution, but are in the nature of independent collateral civil actions governed by the

practice of appeals in civil actions from which either the government or the defendant may appeal. State v. White, 470 So.2d 1377, 1378 (Fla. 1985) *See* Saucer v. State, 779 So.2d 261, 263, n.6 (Fla. 2001).

Therefore, the state had a right to appeal the postconviction court's Rule 3.800(a) order and this Court should affirm the Third District Court's opinion.

CONCLUSION

Based on the foregoing, the State of Florida respectfully requests this Honorable Court affirm the Third District Court of Appeal opinion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the respondent's answer brief on the merits has been furnished by e-mail to Assistant Public Defender James Moody at Appellatedefender@pdmiami.com this 20th day of October, 2014.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was computer generated using Courier New 12 point font.

Respectfully submitted,

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