

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

MAY 10 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

CHARLES HAYWOOD,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
)
 _____)

CASE NO. _____

PETITIONER'S BRIEF ON DISCRETIONARY JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the Defendant in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Broward County, Florida and the Appellant in the District Court of Appeal, Fourth District. Respondent was the Prosecution and the Appellee in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

STATEMENT OF THE CASE AND FACTS

The following facts appear in the opinion of the Fourth District Court of Appeal affirming the conviction (Appendix).

On information alleging shooting with a firearm, Petitioner was convicted of second-degree murder and was adjudicated guilty. The degree of the crime was stated in the judgment as LF (life felony). Petitioner was sentenced to 30 years imprisonment, with a 3-year mandatory minimum for possession of a firearm.

The first issue discussed by the District Court of Appeal in its opinion was whether the trial court erred in enhancing Petitioner's conviction for second-degree murder, a first-degree felony, to a life felony with a minimum penalty of 30 years, while also applying the minimum mandatory sentence for possession of a firearm. The court held that the relevant statute, Section 775.087, Florida Statutes (1983), does not prohibit such double enhancement of a sentence. In so doing, however, the court stated, "We expressly acknowledge conflict with [the decision of] the third district" in Whitehead v. State, 450 So.2d 545 (Fla. 3rd DCA 1984).

The opinion of the Fourth District Court of Appeal was filed April 3, 1985. Jurisdiction of this court was invoked by way of Notice of Discretionary Review filed May 2, 1981.

SUMMARY OF ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE CONFLICTS WITH A PREVIOUS DECISION OF THE THIRD DISTRICT COURT OF APPEAL.

The Fourth District Court of Appeal in its opinion in this case acknowledged that its decision conflicts with a decision on the same issue from the Third District Court of Appeal. This Court must accept jurisdiction to resolve the conflict.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE CONFLICTS WITH A PREVIOUS DECISION OF THE THIRD DISTRICT COURT OF APPEAL.

Petitioner seeks to establish this court's "conflict" jurisdiction. Article V, Section III(b)(3), Florida Constitution; Rule 9.030(2)(a)(iv), Florida Rules of Appellate Procedure. Conflict exists between the instant case and the decision of the Third District Court of Appeal in Whitehead v. State, 450 So.2d 545 (Fla. 3rd DCA 1984). The conflict is express and direct and readily appears from the written opinion of the Fourth District Court of Appeal in the instant case.

The court in its opinion stated, "We expressly acknowledge conflict with the third district", referring to Whitehead, supra. In Whitehead, the majority held that the 3-year mandatory minimum for possession of a firearm and the enhancement provision allowing reclassification of felonies involving firearms could not both be applied to the same sentence. However, in direct conflict, which it acknowledged, the Fourth District Court of Appeal held that both provisions could apply simultaneously.

This court must review the decision in this case to settle the conflict it has created in the law of Florida.

CONCLUSION

The decision of the Fourth District Court of Appeal in the instant case expressly conflicts with a decision of the Third District Court of Appeal on the same point of law. This Honorable Court should exercise its discretionary jurisdiction in this case.

Respectfully submitted,

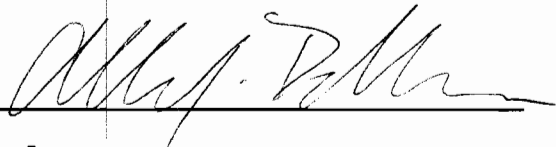
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to GREGORY C. SMITH, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 8th day of May, 1985.



Of Counsel