

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, )  
Petitioner, )  
v. )  
RONNIE E. CHAPLIN, )  
Respondent. )

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CASE NO. 67,492

**FILED**  
S. J. WHITE  
AUG 28 1967  
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Chief Deputy Clerk

RESPONDENT'S REPLY BRIEF ON JURISDICTION

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PRO SE PETITIONER

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RESPONDENT'S REPLY BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

Comes now, Ronnie E. Chaplin, the Respondent in this cause, and the Defendant in a Criminal Case in the lower tribunal, and was the Appellant in the First District Court Of Appeal in a Post-conviction proceeding filed pursuant to Fla.R.Crim.P.3.850. Ronnie E. Chaplin hereinafter will refer to himself as being the Respondent in this cause.

The State of Florida was the prosecution in the trial tribunal and was the Appellee in the appellate proceedings. Hereinafter the State of Florida will be referred to as being the Petitioner.

When needed, Respondent will refer to the appendix that is attached to the Petitioner's pleadings and as marked by the Petitioner.

The Petitioner's citation of this case as reported below and stated therein the Preliminary Statement is accepted.

STATEMENT OF THE CASE AND FACTS

Respondent was tried and convicted in the Fourth Judicial Circuit Court In Duval County, Florida, on October 13, 1983, on two counts of armed robbery. Respondent elected to be sentenced under the guidelines. A sentence of twelve (12) years on each count was imposed concurrently. A timely appeal was taken, however, there was nothing presented on direct appeal that addressed the error that was on the Score Sheet that had been incorrectly prepared and discovered by Respondent after having received all of the records after the direct appeal had been completed. That being the correct score range should have been Seven (7) to Nine (9) years whereas the Score Sheet erroneously placed Respondent to be sentenced in the time range of Nine (9) to Twelve (12) years. Respondent used the Florida Rule Of Criminal Procedure, Rule 3.850 motion for Post-conviction relief as the vehicle to have the prejudicial error corrected. The trial tribunal denied relief on October 3, 1984, finding no merit to the Post-conviction motion and also holding that the error was one that should have been presented on direct appeal, Petitioner's (A-9). Respondent made a timely appeal and the First District Court Of Appeal, State Of Florida, requested a Brief to be filed by both, Appellee (Petitioner) and Appellant (Respondent) on the question of whether or not sentencing errors could be raised in a Fla.R.Crim.P. 3.850 motion for

Post-conviction relief, or were such errors restricted to a direct appeal? See Petitioner's (A-11), dated February 25<sup>th</sup>., 1985. Briefs were filed and the Appellee admitted the Score Sheet was in error, however, argued that the sentence should stand as it was within the Statutory maximum. The Appellee also contended the sentencing error could not be raised in a 3.850 Post-conviction motion and was limited to direct appeal. The Appellee, Petitioner, admitted also that the Appellant's (Respondent's) prior conviction for assault with intent to commit robbery was improperly scored as a prior category 3 offense. And that in making that invalid finding by the trial tribunal added an additional twenty-five (25) points into the score which put Respondent in the 9 to 12 years range illegally. And without that 25 points, Respondent would only have a score of 161, or fall within the 7 to 9 years range. Thus, Respondent was prejudiced by the error that would have compelled Respondent to serve additional time in prison. And as stated by the First District Court Of Appeal, that this case involves a "computation error" (Petitioner's A-4) and is thereby subject to Post-conviction relief, or collateral attack by application for habeas corpus relief as being an illegal sentence. And even though Respondent has not actually started serving the illegal part of the sentence, it would be subjected to collateral attack under ruling of Peyton v. Rowe, 391 U.S. 54, 88 S.Ct. 1549, 20 L.Ed. 2d 426 (1968). That case deals with attacking a sentence to be served in the future. The heart of the issue being that if a

sentence is illegal, it is subject to collateral attack. It has now reached the point where the Petitioner is asking the presiding Court to bar prisoners from the use of Fla.R.Crim.P. 3.850 as the form for the collateral attack.

The First District Court Of Appeal did not agree with the Petitioner's reasoning set forth in the Brief to that Court and ruled that a prisoner could for the first time present a sentencing error in a Post-conviction action. See Petitioner's (A-1,2,3,4,5). The Petitioner is not content to accept that ruling and has filed for discretionary review of which should be denied. The Opinion filed August 13,1985 of the District Court Of Appeal, First District, State Of Florida, should be Affirmed.

#### JURISDICTIONAL STATEMENT

Jurisdiction should be refused based on the Opinion of the lower tribunal of August 13, 1985, and as supported by the Respondent's argument hereafter presented. And as provided by Florida Rules Of Criminal Procedure, Rules 3.800(a) and 3.850, Effective January 1, 1981 (389 So.2d 610) and Effective Jan. 1, 1978, for Post Conviction (353 So.2d 552). The Petitioner is asking the Honorable Supreme Court to rule against the very rules adopted by the Court that show the remedy to be by Post-conviction application.

### SUMMARY OF ARGUMENT

Respondent submits that the presiding Supreme Court has provided Rules for Post-conviction for attacking any judgment(s) or sentence(s) that are illegal and unconstitutional. The rule is 3.850, Post-Conviction Relief, or Motion to Vacate, Set Aside or Correct Sentence; Hearing; Appeal. Florida Rules Of Criminal Procedure, Rule 3.800(a) provides that a Court may at any time correct illegal sentences imposed by it. And it follows that if the Court did not do so, the District Court Of Appeal could do so, or remand to have it done. Further, Florida Rules Of Criminal Procedure, Rule 3.850 provides that a prisoner under sentence claiming the sentence was imposed in violation of the Constitution or Laws of the United States, or of the State of Florida, or that the sentence was imposed in excess of the maximum authorized by law, or that the sentence is otherwise subject to collateral attack, may move the Court which imposed the sentence(s) to vacate, set aside or correct the sentence(s). That is the presiding Court's mandate and Petitioner must accept it, the State must provide some form for attacking an illegal sentence and Fla.R.Crim.P. 3.850 is it.

### ARGUMENT

THE FIRST DISTRICT COURT OF APPEAL  
SHOULD BE AFFIRMED IN THE ORDER  
REVERSING THE TRIAL COURT'S ORDER  
DENYING POST-CONVICTION RELIEF.

Respondent freely admits the errors were not presented

on direct appeal. That Respondent did not have any control over the direct appeal or what was presented therein because as the Court well knows, a defendant never sees the trial transcript and often does not know what the attorney is presenting as errors in the direct appeal. And the attorney will tell the defendant that the attorney needs to keep the transcript until the appeal is completed. Thus, there is no way this Respondent could know what the trial attorney or the appellate attorney would believe proper errors for the appeal. And each attorney may see a case differently and assign different errors in the appeal of a case. Also, there are some attorneys that will not present any claims that a defendant may contend to be presentable. And as in this case, the trial attorney, the appellate attorney, no one presented the errors on direct appeal. With that being true, is Respondent expected to accept that and go right ahead and serve additional time in prison just because the trial attorney, or appellate attorney did not see the errors, or did not want to present them? Once the Respondent had possession of the records and transcript and was able to see the errors, they were presented in the accepted form of a 3.850 Post-conviction motion. Florida Rules Of Criminal Procedure, Rule 3.800(a) provides:

A court may at any time correct an illegal sentence imposed by it.

Respondent was contending that the sentences were illegal and resorted to use Florida Rules Of Criminal Procedure, Rule 3.850 as the form for presenting the errors. Fla.R.Crim.P. 3.850

provides in part;

A prisoner in custody under sentence of a court established by the laws of Florida claiming the right to be released upon the ground that the judgment was entered or that the sentence was imposed in violation of the Constitution or Laws of the United States, or of the State of Florida, or that the court was without jurisdiction to enter such judgment or to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or that his plea was given involuntarily, or the judgment or sentence is otherwise subject to collateral attack, may move the court which entered the judgment or imposed the sentence to vacate, set aside or correct the judgment or sentence.

Underlining by Respondent for parts that apply to this Respondent's case. Respondent used the above Rule as the proper form for presenting the claims. The sentences being illegal because of the added points, show this Respondent had been denied due process of the law in that the trial judge added points, or use points illegally to impose a longer term of imprisonment upon this Respondent. The law of the guidelines was thereby denied Respondent because Respondent was not sentenced within the right time range. Thus, Respondent would be compelled to suffer the loss of liberty for a longer time than otherwise provided had the trial judge followed the law of the guidelines in sentencing this Respondent. And any time a defendant, or Respondent is caused to suffer the loss of liberty for a time longer than that for which the law allows, it constitutes a denial of due process of the law in violation of the Constitution of the State of Florida, Article 1, Sec. 9. And violates Section 1, Fourteenth Amendment to the United

States Constitution. Also, if this Respondent is to be granted the same equal protection as granted those Defendants that are sentenced under the same guidelines, the Court would have to concede that the sentences are illegal. The Petitioner having gone this far, now wants to claim the Respondent is not intitled to any relief? The Petitioner contended the sentences were within the "Statutory" maximum range. However, Petitioner is forgetting that for all purposes the Sentencing Guidelines became "the law" when the Petitioner failed to make any timely objection to the useage of the Sentencing Guidelines at the time the sentences were imposed. Thus, Petitioner must accept the maximum punishment as provided by the Sentencing Guidelines and that means the Petitioner should not attempt to bring in any other sentencing law as a measuring stick.

The only other legal route open to the Respondent in attacking the sentences is by Habeas Corpus if the Post-conviction motion is held illegal, improper or inadequate, Fla.R. Crim.P. 3.850, subsection. The District Court Of Appeal has determined that Post-conviction is the right procedure. And Respondent believes that the ruling on this case falls right in line with Walker v. State, 462 So.2d 452 (Fla. 1985). While in the Walker case the issue delt with the habitual offender statute and the failure of the trial judge to make a finding of fact to support the extended sentence imposed, the theory apply to both cases. That being where a trial judge fails to

state, whether it be mandated by statute or by rules of the court, the findings upon which the judge based the decision to extend the term of imprisonment, or where it is stated and is illegal, where there is no objection made, it would not preclude the appeal courts from consideration of the error. Here in this case, it was not considered by the appeal Court until Respondent returned with the error in the Post-conviction motion. Respondent contends that it makes no difference if the appeal Court had seen the error and ruled on it on direct appeal, or if more time had gone by and the error was brought before the Court, does not change the error, or the result of the ruling simply because the error was not presented on direct appeal. In the Walker case it was also held that the contemporaneous objection rule did not apply to bar appellate review of the Court's failure to follow the mandatory sentencing requirements. It follows that if no contemporaneous objection is required to obtain appellate review of an illegal sentence where a trial judge fails to follow mandatory sentencing laws, that it also should be held that where a trial judge fails to follow the mandatory sentencing guidelines where there is no shown cause for the departure, or where the departure is admitted to be illegal as in this case. The contemporaneous objection rule is based on practical necessity and basic fairness in operation of judicial system and places trial judge on notice that error

may have been committed and provides the trial judge a chance to correct it. Here in this case the trial judge is given a chance to correct the error prior to appeal. The fact that it is presented to the trial judge in a Post-conviction motion or if Respondent was present and able to present it verbally, the trial judge has had the chance to rule on the cited error(s) prior to the appellate Court having done so. The end results is still the same. And as stated in Walker, supra, this type of an error is a fundamental one and is thereby reviewable on appeal. The sentences are unlawful in that they cause Respondent to be incarcerated for a period greater than the law permits. Also stated in Walker was the fact that contemporaneous objection rule would not be applied to sentencing errors because that type of error can be handled with a simple remand. That is, if the Petitioner would give up attempting to have every such case reviewed by the Supreme Court prior to the remand! And in view of the fact that appellate counsels are bound by the acts of the trial counsel, and where trial counsel fails to assign the error(s), and the error is of a fundamental nature, that error should be re-presentable and reviewable by way of the Post-conviction motion. Also the presiding Court has held that if the error constitutes a denial of due process of the law, it may be urged on appeal though not properly preserved below. State v. Smith, 240 So.2d 807 (Fla. 1970). Also in the case of State v. Rhoden, 448 So.2d 1013 (Fla. 1984) is another case where there was no contemporaneous objection

and the appeal court ruled that it was not needed in the sentencing stage. And as it is mandated by the Sentencing Guideline Rules, that a trial judge cannot go beyond the range set by the points, where there is no other cause to do so, it requires a remand for resentencing.

It is noted that in such cases as Weston v. State, 452 So.2d 95 (Fla.App., 1st Dist. 1984) and Walker, supra and State, supra and State v. Rhoden, supra, that the trial judge had to reduce to writing requisite findings to impose the extended term of imprisonment. In this case, the trial judge committed error in allowing the findings of the extra points to go uncorrected when the Post-conviction motion was presented and the trial judge could see the error was there. The Post-conviction motion represents an objection to the sentences that were imposed. Admittedly not timely objection, but one Respondent believes is proper remedy because a fundamental error has been committed. And in the case on Noble v. State, Fla., 353 So.2d 819 (Oct. 20, 1977) held that;

"\* \* \* alleged sentencing error of imposing a split three years with no credit for good time and two years on probation was listed in supplemental assignments of error, appellate court should have considered sentencing error."

The question comes down to whether or not a trial court can correct an illegal sentence imposed by it, Fla.R.Crim.P. 3.800(a) says yes. And Fla.R.Crim.P. 3.850 is the proper form in which to seek that correction, Rule 3.800 apply to any kind of illegal sentence, imposed under Statute law or Procedural law.

And as the appellate Court pointed out, the attack on the illegal sentence may be made by Post-conviction motion, Robie v. State, 451 So.2d 1029 (Fla. 2d DCA 1984); Spurlock v. State, 449 So.2d 973 (Fla. 5th DCA 1984); Lamar v. State, 443 So.2d 414 Fla. 4th DCA 1984), and; Hill v. State, 434 So.2d 974 (Fla. 5th DCA 1983), at page (A-3) of Petitioner's exhibits.

It does not matter if it is a substantive sentence or a procedural sentence. The State made no objection to the type of sentence being imposed and has never contested the use of the guidelines sentences being used by the Courts of Florida. The time for doing that was when the Supreme Court adopted the sentencing guidelines, not during or after their use in a trial Court. Having gone this far, Respondent is sure the Court would agree that a sentence is a sentence no matter what label is attached to it. And it matters not if the trial Court goes beyond the Statutory maximum or beyond the time range, it would continue to be a denial of due process of the law to impose a sentence that is illegal and unconstitutional. And if it is illegal and unconstitutional, it is subjected to attack by 3.850. And the presiding Court established 3.850 for this very type of relief and to take the place of habeas corpus proceedings.

Also, if the State fails to provide a means of collateral attack, a defendant would not be required to exhaust State Court remedies in seeking Federal habeas corpus relief. And the Petitioner would be the first to object to that, so it is

a matter of having to accept 3.850 as the proper proceeding for a collateral attack on a sentence that is illegal. This is very much supported by rule 3.800(a) of Fla.R.Crim.P., i.e., "a Court may at any time correct an illegal sentence imposed by it."

CONCLUSION

Respondent would submit that the Court need not reach back in time and overturn any case law, but that it would be more proper to leave standing the case law on both sides and rule that where the appellate Court finds the violation of the sentencing guidelines has been committed "that warrants vacation of the sentence(s)", Post-conviction would be proper remedy. This would leave standing the rule that each case must be considered on its own merits, give the trial Court the opportunity to correct the error(s) and, afford appellate review where relief is denied without support of the records or files of the case, Fla.R.Crim.P. 3.850, supra.

Respondent having shown in the foregoing premises that the lower Court should be affirmed in this case and jurisdiction denied.

*/s/ Ronnu E. Chaplin*  
PRO SE RESPONDENT

JACKSON COUNTY )  
STATE OF FLORIDA )

Subscribed and sworn to before me this 27<sup>th</sup> day of August, 1985.

*/s/ Barbara J. Walden*  
A NOTARY PUBLIC Notary Public, State of Florida at Large,  
My Commission Expires Jan. 2, 1989, 19\_\_\_\_.

CERTIFICATE OF SERVICE

I, Ronnie E. Chaplin have sent a true copy of the  
"Respondent's Reply Brief On Jurisdiction", to;

Sid J. White, Clerk, (For Filing)  
Supreme Court Building  
Tallahassee, FL 32301

The Honorable Jim Smith, Attorney General.  
C/O Gregory G. Costas  
Assistant Attorney General  
Department Of Legal Affairs  
The Capitol  
Tallahassee, FL 32301

/s/ Ronnie E. Chaplin  
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JACKSON COUNTY     )  
STATE OF FLORIDA    )

Subscribed and sworn to before me this 27<sup>th</sup> day of August, 1985.

/s/ Barbara J. Walden  
A Notary Public

Notary Public, State of Florida at Large.

My Commission Expires Jan. 2, 1989, 19    .