

Supreme Court of Florida

THURSDAY, SEPTEMBER 1, 1988

CHARLES EDWARD BASS,	**	
Petitioner,	**	
	**	
vs.	**	CASE NO. 68,230
	**	
STATE OF FLORIDA,	**	District Court Case No. BE-153
Respondent.	**	(First District)

The opinion dated June 11, 1987 is withdrawn and the opinion dated September 1, 1988 is substituted in lieu thereof.

A True Copy

JB

TEST:

cc: Raymond E. Rhodes, Clerk
Hon. L. Arthur Lawrence, Jr., Judge
Alice Jones, Clerk

Sid J. White
Clerk Supreme Court.

Gary L. Printy, Esquire
Glenna Joyce Reeves, Esquire

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Petitioner,	**	
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vs.	**	CASE NO. 68,230
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STATE OF FLORIDA,	**	District Court Case No. BE-153
	**	(First District)

Supreme Court of Florida

No. 68,230

CHARLES EDWARD BASS, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

ON PETITION FOR REHEARING GRANTED, THE PRIOR
OPINION IS WITHDRAWN AND THE FOLLOWING
OPINION IS SUBSTITUTED IN ITS PLACE.

[September 1, 1988]

PER CURIAM.

We have for review Bass v. State, 478 So.2d 461 (Fla. 1st DCA 1985). This Court has jurisdiction pursuant to article V, section 3(b)(3), Florida Constitution, based on direct conflict of decisions, and we quash the decision of the district court below.

The petitioner, Bass, was convicted in 1979 of armed burglary, armed robbery, and aggravated battery. He was sentenced to consecutive mandatory minimum three-year sentences, which were affirmed on appeal per curiam. Bass v. State, 412 So.2d 473 (Fla. 1st DCA 1982). In the interim between that direct appeal and this, Bass' third motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850, this Court issued its opinion in Palmer v. State, 438

So.2d 1 (Fla. 1983). Bass alleges that because the three offenses arose from a single criminal episode, his sentences were erroneous under section 775.087, Florida Statutes (1981), as interpreted by this Court in Palmer.

The trial court dismissed the motion on the ground that it was a successive motion for the same or similar relief. The district court affirmed on different grounds, stating that "[m]atters which could have been raised on direct appeal may not be considered by motion under Rule 3.850." Bass v. State, 478 So.2d at 461.

In Palmer this Court held that the three-year minimum mandatory sentences described by section 775.021(4), Florida Statutes (1983), could not be imposed consecutively for separate offenses arising from a single criminal transaction or episode. At that time we did not state whether our ruling would have retroactive application. Upon consideration, we have now concluded as a matter of policy that the principle of Palmer should be applied retroactively. We believe that it would be manifestly unfair for prisoners such as Bass, who received consecutive minimum mandatory sentences prior to Palmer, to be treated differently from those who had the good fortune of being sentenced for similar conduct after that decision was rendered.

Thus, if the allegations of Bass' petition are correct, the consecutive imposition of minimum mandatory sentences was illegal and, as such, subject to collateral attack under Florida Rule of Criminal Procedure 3.850. See Dowdell v. State, 500 So.2d 594 (Fla. 1st DCA 1986). Accordingly, we quash the decision of the district court of appeal and remand this case for further proceedings consistent with this opinion.

It is so ordered.

OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, JJ., Concur
EHRlich, C.J., Concur in result only

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF
FILED, DETERMINED.

Application for Review of the Decision of the District Court
of Appeal - Direct Conflict of Decisions

First District - Case No. BE-153

Michael E. Allen, Public Defender, Second Judicial Circuit and
Glenna Joyce Reeves, Assistant Public Defender, Tallahassee,
Florida,

for Petitioner

Robert A. Butterworth, Attorney General and Gary L. Printy,
Assistant Attorney General, Tallahassee, Florida,

for Respondent