

IN THE SUPREME COURT  
STATE OF FLORIDA

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By *[Signature]*

ALANDER CRAPPS,  
Petitioner,

vs.

CASE NO: 68,485

STATE OF FLORIDA,  
Respondent.

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PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

	<u>Pages:</u>
TABLE OF CONTENTS.....	i
TABLE OF CITATIONS.....	i
PRELIMINARY STATEMENT.....	1
STATEMENT OF THE CASE AND FACTS.....	2
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT: THE DECISION OF THE DISTRICT COURT OF APPEAL IN HOLDING THAT THE TRIAL COURT PROPERLY RELIED UPON THE HABITUAL OFFENDER STATUS IN DEPARTING FROM THE RECOMMENDED GUIDELINES SENTENCE IS IN DIRECT AND EXPRESS CONFLICT WITH <u>Vicknair v. State</u> , ___ So.2d ___, 11 FLW 574 (Fla. 5th DCA, March 14, 1986).....	4-6
CONCLUSION.....	7
CERTIFICATE OF SERVICE.....	7
APPENDIX.....	A-1 - A-6

TABLE OF CITATIONS

	<u>Pages:</u>
<u>Cases:</u>	
<u>Hendrix v. State</u> , 475 So.2d 1218 (Fla. 1985).....	5-6
<u>Vicknair v. State</u> , ___ So.2d ___, 11 FLW 574 (Fla. 5th DCA, March 14, 1986).....	4,5,6
 <u>Other Authorities:</u>	
Florida Statutes §775.084.....	5,6

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PETITIONER'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

The Petitioner was the Defendant in the trial court and the Appellant in the District Court of Appeal. He will be referred to as the Petitioner in this Brief. The Respondent, State of Florida, will be referred to as the State. The Appendix contains a copy of the Opinion of the First District Court of Appeal as well as a copy of the trial court's Order finding the Defendant to be an habitual offender. Reference to the Appendix will be designated by "A" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

The Opinion of the District Court of Appeal in this case very adequately summarizes the essential facts necessary for determination of jurisdiction in this Court and Petitioner adopts the same as his Statement of the Case and Facts.

SUMMARY OF THE ARGUMENT

The District Court of Appeal in this case has upheld the trial court's reliance upon the finding that the Defendant was an habitual offender in justifying a departure from the guidelines recommended sentence. The recent case of Vicknair v. State, \_\_\_\_ So.2d \_\_\_\_, 11 FLW 574 (Fla. 5th DCA, March 14, 1986), has held that habitual offender status, by itself, is not a sufficient reason to depart from a recommended guidelines sentence. The court in Vicknair also noted that a departure based upon reasons similar to the determining factors under the habitual offender act, e.g., that a defendant has shown by his actions that he is inherently dangerous and society must be protected by a sufficient period of incarceration, is likewise not a clear and convincing reason for departure.

There is thus express and direct conflict between the two cases which should be resolved by this Court.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL IN HOLDING THAT THE TRIAL COURT PROPERLY RELIED UPON THE HABITUAL OFFENDER STATUS IN DEPARTING FROM THE RECOMMENDED GUIDELINES SENTENCE IS IN DIRECT AND EXPRESS CONFLICT WITH Vicknair v. State, So.2d \_\_\_\_\_, 11 FLW 574 (Fla. 5th DCA, March 14, 1986).

The trial court in this case exceeded the recommended guidelines sentence. (A-2). In a separate Order, the trial court set forth his reasons for departure, one of which was as follows:

"The court has found that this defendant qualifies as a habitual offender pursuant to §775.084, Florida Statutes. Based on this proceeding, the court has specifically found that incarceration is necessary to protect the public from further criminal activity by this defendant. The court hereby specifically incorporates into this order the findings made pursuant to the habitual offender proceedings."

(A-3).

In a separate Order finding the Defendant to be an habitual offender, the trial court noted that in Case No: BC-334, the jury, by its verdict, had obviously found that the Defendant committed perjury when he took the stand and denied involvement in the offense. The trial court found in Case No. BC-151 that the Defendant had not testified or offered any defense indicating an unwillingness to accept blame for his wrongs. The trial court also concluded that in light of the Defendant's "extraordinary vindictiveness and violent character" [in regard to BC-151], there was no likelihood that the Defendant would be rehabilitated and extended incarceration was necessary to protect the public from him. The trial court also found that the Defendant

"has a juvenile history as well as an adult criminal history in circuit and county court." (A-5-6).

In Vicknair v. State, \_\_\_\_ So.2d \_\_\_\_, 11 FLW 574 (Fla. 5th DCA, March 14, 1986), the trial court also set forth as one of the reasons to justify a departure from the recommended guidelines sentence that:

"Defendant was found to be an habitual felony offender pursuant to F.S. §775.084;"

11 FLW at 574.

In rejecting this reason as a basis for departure, the Fifth District Court of Appeal noted that this Court in Hendrix v. State, 475 So.2d 1218 (Fla. 1985), has clearly disapproved of a sentence departing from the recommended guidelines sentence based upon any factor which has already been weighed in arriving at the presumptive sentence. The Court further reasoned:

"Under the habitual offender act (§775.084, Fla.Stat.), a defendant's prior convictions and current conviction are the sole necessary factual basis for the determination that the defendant is an habitual offender under section 775.084(1) and (2). The only additional requirement is a finding by the trial court (by a preponderance of the evidence) that it is necessary for the protection of the public to sentence the defendant to an extended term. §775.084(3), Fla.Stat. Therefore, this finding can be but a conclusion based solely on the defendant's prior record and current conviction."

11 FLW at 574.

The Court further noted:

"In cases where the sentencing judge has departed for reasons similar to the determining factors under the habitual offender act (though not under that act), those reasons have been found to be impermissible under Hendrix. See, e.g., Fowler v. State, 11 FLW 427 (Fla.

5th DCA Feb. 13, 1986) (the fact that trial court was compelled, 'for the protection of society,' to institutionalize defendant for a term in excess of that provided by the guidelines is insubstantial reason because Hendrix so holds); Casteel v. State, 11 FLW 128 (Fla. 1st DCA Jan. 10, 1986) ('reason... that defendant's pattern of conduct renders him a continuing threat to the community' is factually based on defendant's prior convictions and on the current conviction and is improper basis for a departure); Pilgrim v. State, 11 FLW 53 (Fla. 5th DCA Jan. 3, 1986) (finding that defendant 'has shown by his actions that he is inherently dangerous to society and, unless put away from society for a sufficient period of time, will continue in his pattern of criminal conduct...' is not clear and convincing reason for departure)."

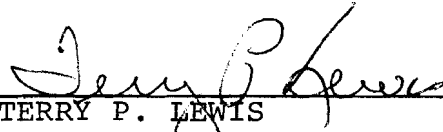
11 FLW at 575 fn.2.

The First District Court of Appeal in the Opinion in the instant case clearly relied upon the finding of habitual offender status and upon the findings therein which are no more than the statutory criteria under the habitual offender act. Accordingly, it is in express and direct conflict with the Fifth District Court of Appeal's Opinion in Vicknair, supra, which conflict should be resolved by this Court. This Court has jurisdiction.

CONCLUSION

WHEREFORE, the Petitioner prays this Court will accept jurisdiction of this cause and quash the Opinion of the First District Court of Appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Brief on Jurisdiction has been furnished to PATRICIA CONNERS, Esquire, Assistant Attorney General, The Capitol, Tallahassee, Florida 32301, and to MR. ALANDER CRAPPS, #558343, Post Office Box 699, Sneads, Florida 32460, by United States Mail, this 3<sup>rd</sup> day of April, 1986.



ATTORNEY FOR PETITIONER