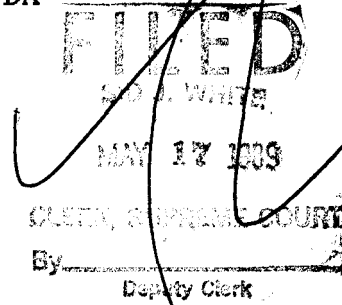


IN THE SUPREME COURT OF FLORIDA

PETER PISANO,
Petitioner,

v.

STATE OF FLORIDA,
Respondent



Case. No. 74,045

ON APPEAL FROM THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

BRIEF OF THE RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

DAVID R. GEMMER
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602

OF COUNSEL FOR PETITIONER

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Rubier v. State,

530 So.2d 523 (Fla. 3d DCA 1988), 3

Slaughter v. State,

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Slaughter v. State,

#73,743 (Fla., juris. accepted 5/12/89), 2

Smith v. State,

526 So.2d 1060 (Fla. 1st DCA 1988), 3

SUMMARY OF THE ARGUMENT

The State recognizes that Slaughter is pending before this Court. However, Slaughter may have come before this Court on a Carawan issue and may be decided without reaching the instant issue. If that is the case, the instant petition should be denied. The instant case, standing alone, does not conflict with any other decision.

ARGUMENT

The State recognizes that Slaughter v. State, #73,743 (Fla., jurisdiction taken May 12, 1989, initial brief on merits due June 6, 1989, oral argument scheduled Sept. 11, 1989), is pending before this Court on jurisdiction. However, Slaughter was brought to this Court on two possible theories of conflict, one relating to alleged conflict with Carawan v. State, 515 So.2d 161 (Fla. 1987), the other relating to alleged conflict regarding the multiple victim injury scoring as in this case. A copy of Slaughter v. State, 538 So.2d 509 (Fla. 1st DCA 1989), is attached as an appendix, demonstrating that both issues exist in the opinion below.

The order accepting jurisdiction in Slaughter in this Court fails to specify on what theory jurisdiction was taken. The state would urge that the Carawan issue was the most likely theory on which jurisdiction was accepted, and that the multiple victim injury scoring issue will not be addressed by this Court. However, the state cannot presume to glean on what basis this Court accepted jurisdiction, and must acquiesce to the fact that this Court's practice has long been to accept jurisdiction of cases raising the same issue as an issue already pending before this Court.

In the event that jurisdiction in Slaughter is determined to have been improvidently granted, or a decision in Slaughter is reached without affecting the issue common to this case, the state respectfully urges that there is no conflict between this case and any other case on the instant issue. Specifically, the

cases relied upon by petitioner, Jackson v. State, 533 So.2d 888 (Fla. 3d DCA 1988), Rubier v. State, 530 So.2d 523 (Fla. 3d DCA 1988), Fennell v. State, 528 So.2d 1212 (Fla. 4th DCA 1988), and Smith v. State, 526 So.2d 1060 (Fla. 1st DCA 1988), merely stand for general principles and do not directly and expressly conflict with the instant case. Copies of the four above-cited cases are included in the attached appendix.

The simple matter is, there is no problem with the decision below. As this Court noted when it amended the guidelines, the alteration merely clarified the guidelines. Presumably, had the question of whether multiple counts could result in multiple scoring for victim injury to the same victim been brought to this Court prior to the amendment, this Court would have determined that such scoring was permissible. Opposing counsel cites to no case prior to the amendment which addressed the issue of multiple count scoring, and so, presumably, the issue had never been raised. This Court, therefore, must have amended the rule only in an abundance of caution, to forestall having to reach the issue on appeal.

Given that this Court would have permitted multiple scoring for multiple counts even prior to the rule change, all of the cases petitioner alleges conflict simply do not apply.

CONCLUSION

This Court should decline to take jurisdiction due to lack of conflict, or, in the alternative, hold the proceeding in abeyance until the matter of Slaughter is determined, and the question of whether the opinion below sub judice should be quashed is settled by the proceedings in Slaughter.

Respectfully submitted,

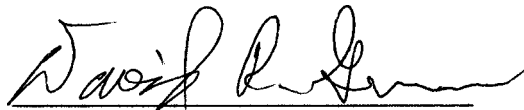
ROBERT A, BUTTERWORTH
ATTORNEY GENERAL



DAVID R. GEMMER
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670
Florida Bar#370541

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Robert F. Moeller, Assistant Public Defender, Public Defender's Office, Polk County Courthouse, P.O. Box 9000--Drawer PD, Bartow, Florida 33830, this date, May 15, 1989,



OF COUNSEL FOR PETITIONER