

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

vs.

GARY STEPHEN BEASLEY,
Respondent.

CASE NO. 76,102

FILED

SID J. WHITE

SEP 18 1990

CLERK SUPREME COURT

Deputy Clerk

PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner relies on the preliminary statement and statement of the case and facts contained in its initial brief.

SUMMARY OF ARGUMENT

No summary will be provided in view of the brevity of the argument.

ARGUMENT

ISSUE

BEASLEY WAS GIVEN REASONABLE NOTICE AND A FAIR OPPORTUNITY TO BE HEARD PURSUANT TO THE DUE PROCESS CLAUSE OF THE FEDERAL AND STATE CONSTITUTIONS.

A.

Beasley does not challenge the state's argument based on the ex post facto clause that he was given reasonable notice of the offenses and the punishments thereof, including the mandatory costs at issue here prior to the commission of the offenses. Nor does Beasley challenge the state's argument that he was given reasonable notice that, upon conviction, a sentencing hearing would be promptly conducted at which sentences and costs would be imposed. Indeed, Beasley's brief concedes that the sentencing hearing is an adequate opportunity to be heard if reasonable notice is given. Thus, the only issue appears to be whether Beasley was given his due process right of reasonable notice. The state reiterates its position that publication of the criminal offenses and punishments thereof in the Florida Statutes gives every citizen constructive and reasonable notice. Akin v. Bethea, 33 So.2d 638 (Fla. 1948); Thompson v. State, 56 Fla. 107, 147 So. 816 (1909); Sammis v. Bennett, 32 Fla. 458, 14 So. 90 (1893). Again, if this were not so, the reasonable notice component of the ex post facto clause would preclude conviction and punishment of Beasley or any other citizen. Such reasonable

notice must be given prior to the commission of the offense itself. Weaver v. Graham, 450 U.S. 24, 28, 67 L.Ed.2d 17, 23, 101 S.Ct. 960 (1981); State v. Malone, 512 So.2d 832 (Fla. 1987); Granfrancisco v. State, 509 So.2d 1331 (Fla. 2d DCA 1987). Reasonable notice given prior to the commission of the offense is necessarily given prior to the commencement of the trial.

B.

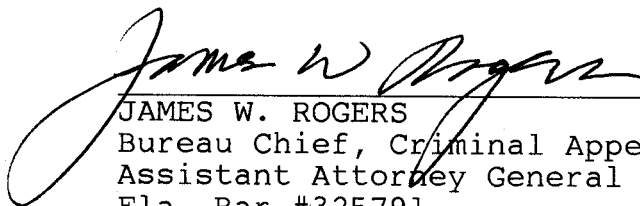
Beasley also argues that the five percent surcharge of \$2500.00 imposed pursuant to section 960.25, Florida Statutes, must be treated as a cost and not a fine. The state agrees with the district court below that a "fine" more accurately describes the surcharge. However, consistent with its position in A. above, the state points out that the label is not controlling. Generically, the mandatory costs, fines, and sentences are all penalties for violation of the criminal offenses here. From a constitutional due process viewpoint, if Beasley was not given reasonable notice and a fair opportunity to be heard by their publication in Florida Statutes then none of the penalties, whatever their "label," may be imposed.

CONCLUSION

The answer to the certified question is yes.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

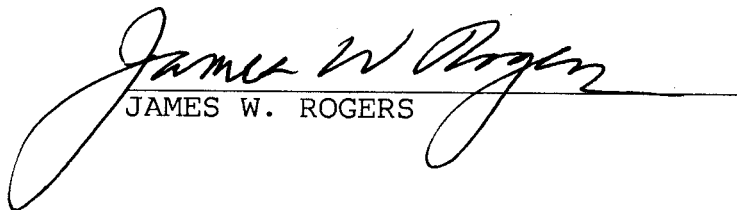

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Allen J. DeWeese, Assistant Public Defender, 301 N. Olive Avenue, 9th Floor, West Palm Beach, Florida 33401, this 13th day of September, 1990.


JAMES W. ROGERS